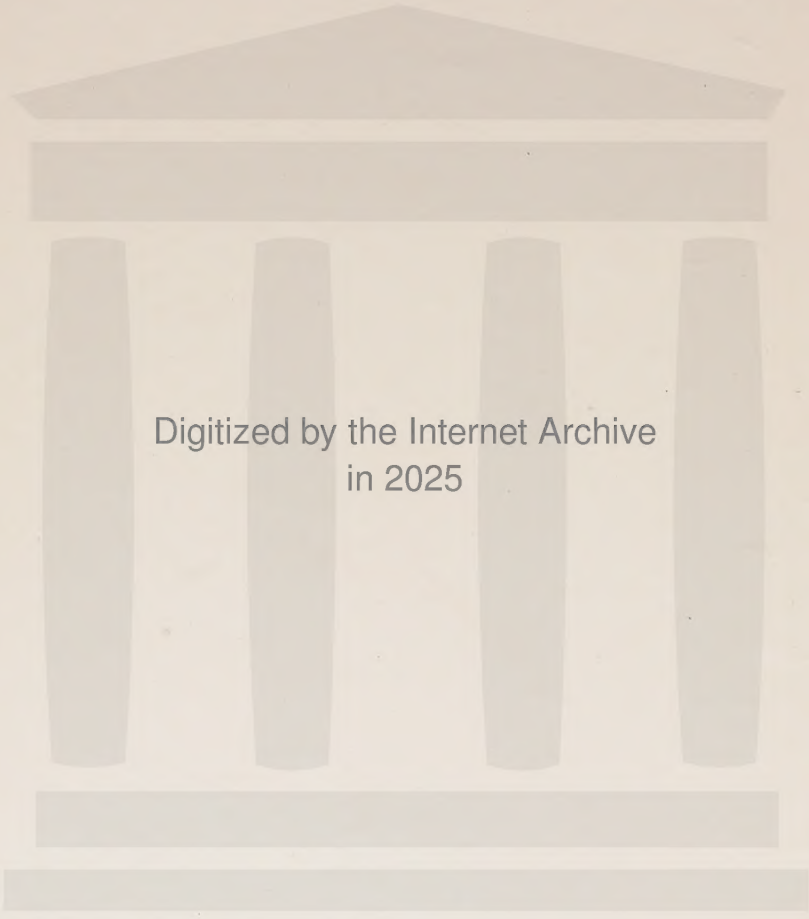

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CYCLOPEDIA OF AMERICAN GOVERNMENT

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VOLUME II

FINANCE-PRESENTMENT

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CYCLOPEDIA OF AMERICAN GOVERNMENT

VOLUME II

FINANCE, EUROPEAN SYSTEM OF

How Far National Systems are Similar.—Strictly, there is no European system of finance. Each country has its own system which is a joint-product of historical conditions and an evolving science of finance. Both influences, reënforced by conscious imitation of other nations, coöperate to bring about an essential similarity of main features in the several national systems. Like needs for public expenditures result from like constitutional limitations, and forms of political organization and social and political theories, and like industries, trade, forms of property and income provide substantially similar sources of public revenue. The science of finance, dealing with similar data and being itself a product of collaboration by scientists and administrators in all countries, also tends to create a uniformity of national systems.

Expenditures.—The ordinary gross expenditures of leading European governments under main heads, according to Schwarz, were (in millions) in 1908:

	Unit	State Enterprises	Collecting Revenues, Fiscal Monopolies	Army, Navy and Pensions	Education	Debt Service	Other	Total
Great Britain	Pound	17.5	3.2	58.2	17.4	29.5	26.0	151.8
Germany (Empire and States)	Mark	3,267.3	142.8	1,162.1	317.8	735.5	1,749.1	7,376.6
France	Franc	304.0	233.4	1,203.6	271.2	973.4	886.0	3,871.6
Italy	Lira	167.1	150.2	400.6	76.9	592.7	325.7	1,713.2
Austria-Hungary	Crown	998.7	238.3	499.1	151.7	710.1	838.3	3,436.2

Expenditures for state enterprises—post, telegraph, government railways, domains—and for fiscal monopolies—tobacco, matches, salt—are gross payments, usually offset by greater receipts, and hence figures on the revenue side of net budgets.

Prominent among expenditures proper are the following: (1) cost of armaments; military and naval expenditures, including pensions, absorb almost half of Great Britain's net national revenues partly because that government defrays armament costs from current revenues. Continental countries extensively meet them by enlarging the debt—placing loans to cover resulting deficits or to pay "extraordinary" costs of armaments. (2) Costs of debt service; which are current payments towards costs of past wars, covering deficits created by armament expenses, besides making public improvements and acquiring more or less productive enterprises—railways, telegraphs, telephones, tobacco and other factories. (3) Expenditures for education; improving public schools and educational facilities, pensioning retired teachers, enlarging the share of central government in these costs. (4) Promoting industries and commerce, including transport and communication facilities, a rapidly increasing item. (5) Social welfare; especially costs of public employment bureaus, old age pensions, workingmen's insurance. Even Great Britain, though tardily, has vigorously adopted these policies.

An expanding local government expenditure, varying from country to country, adds from 30 to 100 per cent to the fiscal burdens. They double certain items such as education and debt; provide purely local services, and reduce in aggregate the disproportion between armament expenditures and other expenditure groups. There is a tendency for the National Governments to limit and control local expenditures and debts and to assume a growing share in

costs of general services—such as education, thoroughfares, prisons, police, public assistance.

Revenues.—The relative proportions of net national revenues drawn from main sources were, in 1908:

	Great Britain	Germany	France	Italy	Austria-Hungary
State enterprises	5.4	30.5	3.6	6.1	11.0
Customs and taxes, net	93.3	55.4	91.0	84.1	82.4
Other receipts	1.3	14.1	5.4	9.8	6.6

Despite varying methods of classification it is clear that state enterprises yield a striking part of net revenues in Germany, and notable and increasing sums in other continental states, where the acquisition of the more lucrative railway lines proceeds. These revenues, however, have a tendency to decline in hard times, like customs duties.

Customs and taxes provide nine-tenths of the British and French, and four-fifths of the Italian and Austro-Hungarian net revenues. On a similar basis—including fees above placed under "other receipts"—Germany's proportion would be about three-fifths. British customs duties yield over one-fifth of national revenue, 95 per cent of this being from alcoholic liquors, tobacco and "colonial" products. The other governments derive approximately one-seventh of their national revenues from customs, chiefly from duties designed for agricultural and industrial protection. Internal taxes are drawn mainly from income and consumption taxes, which are developing as parts of the tax system with increasing emphasis on the former. Some striking tendencies of income taxation are: (1) differentiation of sources and imposing of higher rates on funded incomes; (2) accentuation of progressive rates on larger incomes, partly by exemption and abatement on smaller incomes, partly by directly progressive rates, also by a super-tax (Great Britain) and by a supplementary property tax (Prussia). The latest English and German legislation seeks special contributions from the "unearned increment" in land. Inheritance taxes, rapidly progressive as to amount and kinship of successor, further accentuate those tendencies which result jointly from fiscal exigencies and practical recognition of faculty and social theories of taxation. Consumption taxes come chiefly from alcoholic drinks, tobacco, extensively from sugar and salt. Fees, registration and stamp duties, variously classified under taxes and other receipts, yield considerable sums.

Local revenues present greater variety than national revenues, both between countries and between gradations in local government. They are chiefly derived from taxes on property, limited additions to national taxes, funds allocated by the central government from special revenues or for special services; especially from fees, licenses, earnings from municipal enterprises—gas, water, light, tramways—and octrois (France, Italy). The tendency is to separate sources of national and local revenues, assigning to central governments taxes based on ability to pay, and to local governments taxes on land, buildings, businesses, services wherein values are directly affected by local improvements. The Miquel reforms in Prussia (1893–95) completely applied this principle. Besides attaining greater efficiency and equity in administration of revenues, they release the people from local consumption taxes and national revenues from local additions.

See APPROPRIATIONS, AMERICAN SYSTEM OF; COST OF GOVERNMENT IN THE UNITED STATES; DEBT, PUBLIC ADMINISTRATION OF; FINANCIAL POLICY OF THE UNITED STATES; PUBLIC ACCOUNTS; STATISTICS, OFFICIAL COLLECTION OF; TARIFF POLICY OF THE UNITED STATES; TAXATION, CONSTITUTIONAL BASIS OF.

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FINANCE, LOCAL SYSTEMS OF. Types and Forms.—Heterogeneous systems of finance in the United States reflect with varying degrees of fidelity characteristics derived from the main types of local administration: *viz.*, township, county, and mixed systems. Autonomous cities, to some extent towns and villages, represent a fourth distinct, but varying type. Under each local system, many school districts levy taxes and appropriate funds for school purposes, though actual fiscal administration is exercised by township or county officials. Enabling powers conferred by legislatures on each kind of local administration limit variously and closely the purposes of expenditure, amount of debt, sources and amount of taxes.

New England.—In New England towns, the town meetings (*see*) vote appropriations and tax levies. Selectmen (*see*) or assessors (*see*) value and assess real estate and personal prop

erty, and prepare tax lists at rates which will yield the requisite sums including the apportioned quota for county and state taxes. The town treasurer, directly or through tax collectors, receives revenues and transmits to county and state treasurers their respective quotas. He holds the town revenues, and, subject to warrant of the selectmen, pays township expenditures, keeping detailed records of all receipts and disbursements. The fiscal functions and administration of New England counties widely vary, being *nil* in Rhode Island. County expenditures and tax levies are fixed in New Hampshire and Connecticut by county members of the legislature, elsewhere by county commissioners, with subsequent legislative enactment in Massachusetts. A county treasurer receives, holds, and, subject to warrant of the county commissioners, disburses, the funds of the county.

South.—In the southern states, county boards supervise county finances, determine the expenditures and fix tax levies, adding state taxes on general property—commonly by specifying rates (mills) for each main object of expenditure. They assess the much used license taxes, and sometimes act as boards of equalization and correction for tax assessments. In Georgia—as in Connecticut, New Hampshire, Indiana and Arkansas—separate officials fix tax levies, thus separating this function from appropriations. Elective assessors and deputy assessors value and assess locally taxable property and prepare tax lists. Taxes are received by collectors, sheriff, or treasurer, and held usually in separate funds by the county treasurer, who, subject to warrant of the county board, makes disbursements. The county auditor, or clerk, audits bills.

Middle States and West.—In the mixed systems of New York, Pennsylvania and many western states, the characteristic features of township and county systems are variously combined. The township system is also represented in the South. County fiscal functions increase in relative importance in most New England states and dominate in the West. Economy and efficiency of centralized administration for such services as education, charities, and roads explain this tendency. County boards usually equalize aggregate assessments between districts, but sometimes they make adjustments between individuals.

Expenditures.—Approximately 55 per cent of the aggregate government expenditures in the United States were disbursed by local governments in 1902—almost three-fifths by cities. Besides costs of administration, the local expenditures were mainly for education, roads and bridges, courts and prisons, charities, interest on debt, and health. Cities and towns have additional expenses for fire protection, sewers and drainage, lighting and parks. Distribution between county and minor divisions varies widely, counties bearing more in proportion as townships are less developed and urban population relatively small.

Revenues.—For the whole country, the general property tax yielded (1902) most of the local revenues; *viz.*, in cities of over 25,000, 81.4 per cent; in cities of 8,000 to 25,000, 76.6 per cent, in counties 79.9 per cent, other minor divisions 80.7 per cent. Subventions and grants, licenses (chiefly liquor), and poll taxes gave almost the whole remainder. Except in cities, the bulk of poll taxes and the major part of license taxes other than liquor were obtained in southern states. Subventions for various purposes, especially education, are granted by most states. The recent tendency in some states towards centralization of various taxes is often accompanied by division of the proceeds with local governments. Cities obtain revenues from similar sources, also largely from fees, municipal services and special assessments.

See ASSESSMENT OF TAXES; BUDGETS, STATE AND LOCAL; COUNTY GOVERNMENT; EXPENDITURES, STATE AND LOCAL; FINANCE, STATE SYSTEMS OF; PUBLIC ACCOUNTS; TAXATION, SUBJECTS OF; TOWNS AND TOWNSHIPS.

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E. H. VICKERS.

FINANCE, STATE SYSTEMS OF

Diversity of State Systems.—Original similarity of economic conditions, constitutional limitations, administrative organization and functions gave wide uniformity of state systems of finance, though variations were abundant in local systems. Efforts at reform, by following measures elsewhere successful, still tend to assimilate state systems. Nevertheless perplexing diversity of systems grows out of changing economic conditions, urban growth, diversification of interests, different methods of taxing new forms of property, and constitu-

tional limitations. Where apparent similarity exists, variety actually arises from different methods of classification and accounting, and renders comparisons deceptive or impracticable. The resulting diversity of state fiscal systems, especially of revenues and administration, is such that only a separate exposition in detail for each state could be completely accurate.

Expenditures.—The general expenditures of the states and territories aggregated (1902) $185,600,000—somewhat less than the total expenditures of counties, one-third that of cities, four-fifths that of other minor divisions. One-third of the states' total went for education, common schools absorbing 75 per cent. Directly for education some states expend little (Tennessee 2, Massachusetts 5, per cent), others more than half their totals (New Jersey, Delaware, Michigan, Texas). Proportions for common schools range from almost nothing (Indiana) to practically all educational expenditure (New Jersey). These variations attach to varying degrees of decentralization. The enumerated expenditures for common schools are practically subventions paid to local governments which maintain such schools. The remaining two-thirds of the aggregate general expenditures went: for insane, 11 per cent; for charities, 10 per cent; for legislation and administration, 8.6 per cent; for penal institutions,, 7.6 per cent; for courts, 6 per cent; for interest, 5.3 per cent; military, highways, sewers and drainage, agriculture, police and inspection, parks and recreation, health conservation, etc., took the rest. Under most of these different heads, expenditures by the several states range from nothing or almost nothing, to proportions doubling the average. Different methods of accounting contribute to these statistical variations. Efficiency and newly assumed functions of more centralized administration continually increase state expenditures under every head, without arresting the growth of local expenditures. Besides general expenditures, further payments by states (1902), aggregating $86,000,000, were composed mainly of investments ($27,300,000), book transfers $25,800,000, debt redemption 17,500,000, revenues collected for other civil divisions $10,400,000. Excepting debt redemption, these payments inequally distributed among states, represent little actual charge for state uses on current revenues.

Revenues.—Certain classes of state revenue connected with debt refunding, book transfers, various temporary receipts on account of local governments and disposal of state property, are nominal results of accounting methods or occasional resources. Omitting these, state revenues are classified as general and commercial. The percentage of aggregate general revenues derived by states and territories (1902) from the main sources was: general property tax, 51.7 per cent; special property and business taxes, 32.7 per cent; liquor licenses, 6.1 per cent; other licenses, 5.5 per cent; subventions and grants, 1.7 per cent; poll taxes, 1.4 per cent. Recent changes reduce somewhat the percentage from general property taxes, increasing that from special taxes.

While general property yields about half of the total, yet proportions range from nothing (Connecticut, Delaware) to 90–96 per cent (South Carolina, Utah, North Dakota, Oklahoma). South Carolina supplements general property taxes with commercial revenues, using but slightly other forms. Over two-thirds of the states—including all the south central and western (except Montana), and most of the north central and south Atlantic, with New Hampshire in the north Atlantic divisions—receive above half of their general revenues from this source. But, while general property usually includes "all property, both real and personal," yet both legal exemptions and definitions of real and personal property widely vary among states. Thus Vermont exempts personalty of residents which is located in another state. Deductions for debt and mortgages are allowed variously, or not at all. Many states tax corporations separately by special methods—several using the general property tax but slightly for state purposes—while some state constitutions make all franchises taxable under general property. Differences in classification make impossible accurate statistical comparisons—especially the ratio of realty to personalty—between the several states. Obvious inequalities of assessed valuation (*see*) cause widespread discontent with this tax as a main source of state revenue. Two reforms much urged are in some measure realized: (1) separation of sources, raising state revenue primarily from corporations, licenses, fees, and leaving land and tangible property for local taxation (Connecticut, Delaware, Pennsylvania, West Virginia); (2) classification of property, and low tax rates on those classes which evade higher uniform rates. Several states now have low flat rates on moneys and credits (Maryland, Pennsylvania, Indiana, Minnesota). Constitutional limitations, especially one requiring that all kinds of property be taxed at a uniform rate, hamper most states, or make constitutional amendments a preliminary to such reforms.

Special property taxes are derived from inheritances and mainly corporations. These and intimately related business taxes together yield one-third of all general revenues. States usually tax corporations under general property, but increasingly by special methods designed more simply, directly and equably to reach various forms of corporate property. To this tendency, state constitutions interpose obstacles. Hence few states have completely differentiated corporation taxes from general property. Nine-tenths of the aggregate special property taxes, including inheritance (1902), were raised by four states where separation

of sources was extensively realized (Massachusetts, Connecticut, Pennsylvania, New York).

Business taxes variously share the nature of special property and license taxes, and apply to corporations and individuals. They supplement general property taxes, especially in southern states, differing from state to state; and partly supplant general property, corporation and license taxes. About three-fourths of the states have inheritance taxes. Many states exempt, other fix low rates for direct heirs. Rates are usually progressive collaterally, rarely as to value of estate. Collection is often lax, total yield, therefore, moderate but increasing. New York's law of 1910 applied (double) progressive rates much below those in Great Britain. Circumvention by change of residence induced the governor to recommend repeal. The law of 1911 moderated the rates.

Many states leave liquor licenses wholly for local use. New York, Pennsylvania, Ohio, Massachusetts together obtained (1902) over three-fourths of the aggregate raised for state purposes from that source. Business licenses yielded important sums to Wisconsin, Pennsylvania, Texas, Louisiana and a few other states, chiefly in the south Atlantic and south central divisions, and largely from sources covered in some states by business and corporation taxes. Poll taxes yield state revenues only in Indiana, and the south Atlantic, south central and western divisions. Several states have income taxes of insignificant yield. Wisconsin levied an income tax to be effective 1912, progressive in rate, to supplant personal property taxation.

Administration.—State systems of administration are differentiated primarily by the relative degrees of decentralization and by differences in the main forms of revenue, involving differences in methods of control and accounting. States are assuming a larger share in expenditures and administration, both of which have rested mainly with local governments. Expenditures are effected usually by the state treasurer (*see*) and auditor. Several states seek more effective supervision by vesting in a board of control (*see*) large powers over all expending agencies. Revenue administration centers in a state comptroller (*see*), or auditor and treasurer. Differences in the functions and powers of these several agencies attach especially to general property, corporation, business or license taxes. Administration of general property taxes, mainly under local systems (*see*), hinges on assessed valuation (*see*). Where apportioned, each township fixes the state rate, and unequal valuations affect only its contributions for county purposes. But where, in more centralized systems, the state government fixes the uniform rate to be added to local assessments, unequal valuations correspondingly increase or reduce local contributions for state purposes. Boards of equalization of varying efficiency, never adequate, readjust such inequalities. Some states more hopefully employ tax commissioners (*see*) to similar ends. Corporation taxes are variously assessed, increasingly under the "unit rule," by special boards which include with growing frequency tax commissioners and other experts. Corporations commonly so taxed are railway, telegraph, telephone, sleeping car, express, often street car companies. Where taxed by special methods, the capital stock, or gross or net earnings, is the basis. Some states prohibit, some compel, taxation of "corporate excess," or franchise, value. Individual shareholders in such corporations are rarely taxed separately. Corporate tangible property is commonly taxable in localities where situated. Bank stock is usually assessed at the bank against individual shareholders. Corporation and license taxes are with increasing frequency collected by state officials, especially officials who issue licenses, and in some cases such revenues are wholly or partly returned to local governments.

See Appropriations, American System of; Assessed Valuations, Comparative; Assessment of Taxes; Auditor, State; Budgets, State and Local; Comptroller, State; Cost of Government in the United States; Debt, Public, Administration of; Expenditures, State and Local; Public Accounts; Public Property; Purchase of Public Supplies and Property; Revenue, Public, Collection of; Revenue, Public Sources of; Tax Commissioners and Tax Commissions, State; State Departments, Heads of; Taxation, Subjects of.

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FINANCIAL POLICY OF THE UNITED STATES

The financial policy of the Federal Government differs in a marked degree from that of the leading European nations because of the separation of powers between the national and state governments. This affects both revenue and expenditures, and more particularly the latter. The underlying principles which determine this division of financial activities are described elsewhere (*see* FINANCIAL POWERS, CONSTITUTIONAL BASIS OF). The most significant constitutional provision (Art. I, Sec. ix, ¶ 4), which has, of necessity, driven the Federal Government to indirect taxation, is that, until the passage of the Sixteenth Amendment (*see*) all direct taxes (*see* TAXES, DIRECT) were apportioned; while in expenditures, the exercise of certain powers by states has relieved the National Government of responsibilities which come upon other large countries.

The financial policy of the United States may conveniently be discussed under four headings: (1) revenue; (2) expenditure; (3) indebtedness; (4) participation in private business.

Revenue.—For financial support the Government has rested almost entirely upon indirect taxes, as customs receipts on imports, and internal revenue or excise duties; and until the close of the Civil War the former was almost the sole reliance. From the organization of the Government until 1910 inclusive, the total ordinary receipts were 20,320 millions; of this, 11,195 millions came from customs; 8,445 millions from internal revenue; 28 millions from direct taxes; 362 millions from sales of public lands; 1,391 millions from miscellaneous sources; 96 per cent of the total has been thus derived from customs and internal revenue. Internal revenue duties were long regarded as emergency income, to be used only temporarily, as in case of war.

When import duties were adopted as the main source of financial supplies, it was almost inevitable that the revenue system should be utilized to further industrial and commercial policies. There is no system of taxation which so keenly affects business relationship as does the collection of duties on goods coming into a country, for it discriminates against certain merchandise in favor of other competing products. A domestic tax, however, places the same burden upon all home producers and relatively does not change their positions as competing rivals (*see* PROTECTION, THEORY).

The revenue system was, therefore, early diverted into an agency to protect domestic industry. At first protection was incidental to revenue, but since 1816 protection has been advocated with increasing force as a controlling principle in the making of tariffs. Duties have been laid upon thousands of different kinds of commodities so that the revenue is derived from a great variety and number of trade operations, and this, in turn, causes wide and sometimes violent fluctuations in receipts. As income cannot be predicted within reasonable limits of accuracy, the Treasury has never been in a stable position. Surpluses and deficits have been unexpectedly large, and each has created embarrassing problems.

Taxation of domestic industry by internal revenue duties has been less restricted. In the two earlier levies of internal revenue taxes (1791 and 1814) duties were imposed upon distilled spirits, carriages, manufacture of snuff and sugar, and auction sales; and in the Civil War period, upon almost every form of the manufacturing, mercantile and transportation industries. After the war, duties were practically limited to whisky and tobacco. As the objects have been few, it has been possible to gauge in advance their productivity, and in so far these taxes have contributed to an orderly budget.

Unlike European nations, the Federal Government has made but little use of an income tax (*see*). Until the Civil War it was not suggested, and its benefits, when then adopted, were retained for only a short time. During the past twenty years there has been an increasing desire to add this prop to the financial desire to add this prop to the financial system, system, but constitutional difficulties until 1913 barred the way. One financial resource the Federal Government has neglected to employ—its great national domain. For one brief period (1830–1835) the Treasury receipts from the sales of public lands were large, in one year exceeding that from any other source; but as a whole the income has been insignificant. Intentionally it has been the policy to dispose of public lands on easy terms to settlers, and revenue has been a secondary object. Only within recent years has the country been aroused to consider the advantage of a stricter policy, whereby national resources owned by the Government may be conserved and used to yield a public revenue (*see* CONSERVATION).

Expenditures.—Until recently the policy of the Government in the matter of expenditures has been almost exclusively devoted to the maintenance of the primary agencies of Gov-

ernment—its executive, judicial, and legislative branches; to the support of a diplomatic and consular service abroad; to the care of Indians; the improvement of rivers and harbors; to pensioning soldiers who have engaged in the nation's wars; to the payment of interest on debts, wholly due to the necessities of war; and to protection of the nation's sovereignty by an Army and Navy. From 1810 to about 1835 various proposals were made for national roads and turnpikes, and one was built (*see* CUMBERLAND ROAD). Until the Civil War, however, the nation kept closely to the above named objects. In 1862 Congress authorized that grants be made for the establishment of agricultural colleges (*see* MORRILL GRANT), but payments for this purpose did not directly involve taxation, for the expenditures were to be made from the proceeds of sales of public lands. The burdens of the Civil War checked any disposition, if there was one, to expend money on other than the primary duties of government.

After 1880 a surplus revenue stimulated proposals of expenditure which covered a wide range, among which federal grants to common school education received zealous, though unsuccessful, support. Congress still held to the traditional policy and applied its funds to the creation of a new Navy; and rather than embark on new policies, it refunded to the states $15,000,000 of direct taxes collected during the Civil War; just as fifty years earlier it distributed back to the states a surplus derived from unexpected sales of public lands (*see*).

With the beginning of the twentieth century the Government, through legislation by Congress, reached out in new directions; it engaged in the construction of the Panama Canal; extended the work of the Department of Agriculture into new fields; and showed a disposition to engage in humanitarian services which formerly would have been left to the states to perform. The indications are that the expenditures of the Government will extend over a much wider range of application.

Debt.—The American people have never favored the perpetuation of a large national debt. In the earlier years of the republic this feeling was influenced in some sections by the belief that public indebtedness magnified federal power and responsibility at the expense of state sovereignty. Counter convictions as to payment of the national debt have rarely been put to the serious test of sacrifice because American revenues have continued so ample, often more than was expected. Notwithstanding these qualifications, Congress has been solicitous to provide for prompt payment of indebtedness. Bonds (*see*) have run for short periods as compared with indefinite loans of foreign nations. The issue of Treasury notes (*see*) may appear to be an exception, but acceptance of this method of providing for immediate financial needs has been due rather to mistaken notions in regard to the benefits of an enlarged monetary medium, than to a desire to escape just obligations. An inflexible tax system has made it difficult for the Government to meet sudden emergencies; and the apparent lack of loanable capital has frequently tempted Congress to rely upon Treasury notes, but with the exception of the legal tender (*see*) notes of the Civil War, they have always been quickly funded; moreover, with the exception of the greenbacks, they have borne interest. They are, therefore, to be regarded as short-term certificates of indebtedness rather than as paper money. In more recent years there has been a greater tolerance of a public debt, due to the necessities of the national banking system which requires bonds for a basis of circulation. But the national debt of the United States is small compared with those of other countries. In the United States the per capita national debt in 1910 was $11.42; in the United Kingdom, $82.38; in France, $150.09; in Germany, $17.38; and in Canada, $45.09.

Participation in Business.—The Federal Government carries on several great enterprises, particularly the Post Office; but the chief influence over business which the Treasury has exerted has been upon the money market, and indirectly upon commercial affairs, through the possession of large balances of idle public money. The proper use of such state funds in its earlier aspects was concerned with the security of public funds; later, it has included the service which the Treasury could render by making its resources temporarily available for private use. The withdrawal of large sums by taxation in excess of current expenditures, if kept in government vaults, lessens by so much the amount of loanable capital in its most available form, that of money.

After the establishment of the sub-treasury system (*see*) in 1846, the Treasury gave little concern to the money market; and after the Civil War it had abundant use for all its funds. In 1873, however, on the celebrated Black Friday, the Secretary of the Treasury, on the personal direction of the President, broke the corner in gold by selling gold in the public market out of the Treasury.

Between 1880 and 1890 the question became more serious, for surpluses threatened to pile up a huge accumulation in the Treasury. The difficulty was temporarily met by buying bonds at a premium at considerable pecuniary sacrifice to the government, as the price of the bonds was lifted to an artificial level. Then for a short time the deposits (*see*) in banks were increased, and the money was returned to commercial channels, but the Republican administration in 1889 reversed the policy. Renewed prosperity in 1898 again brought the question into prominence, and deposit in banks was chosen as the solution. The Treasury became more and more involved with the business

world, and new devices were invented whereby the Treasury could exert an influence upon the money market, particularly during the administration of Secretary Shaw which extended from 1902 to 1907.

According to A. P. Andrew, who has made a special study of this period, this administration "was marked by at least six significant departures from the paths of his predecessors:" (1) placing government money with banks upon other security than government bonds; (2) exempting banks from maintaining the legal reserves against Government deposits; (3) transferring to banks public money which had already been turned into the Treasury; (4) artificially stimulating the importation of gold; (5) deliberately withdrawing money from banks in certain seasons in order to redeposit it later; (6) forcing alternately the enlargement and retirement of the note issue, by changing his order about deposit security as the Secretary saw fit. His policy was criticised and some of these innovations will probably not be repeated. But there is a general belief that the Treasury cannot maintain a position of isolation, and that statutory methods should be authorized, so as to bring the Treasury into closer relationships with the money market. The deposit of customs receipts as well as internal revenue receipts in banks has consequently been authorized; and a desire to place all the Government funds at the disposal of a banking agency is one of the arguments advanced in favor of a central bank (*see* BANK, CENTRAL) which shall hold Government deposits and act as the fiscal agency of the Treasury.

See APPROPRIATIONS, AMERICAN SYSTEM OF; BUDGETS, FEDERAL; COST OF GOVERNMENT IN UNITED STATES; DEBT, PUBLIC, ADMINISTRATION OF; DEBT, PUBLIC, PRINCIPLES OF; EXPENDITURES, FEDERAL; FINANCIAL POWERS, CONSTITUTIONAL BASIS OF; FINANCIAL STATISTICS; LEGAL TENDER CONTROVERSY; REVENUE, PUBLIC, COLLECTION OF; SUB-TREASURY SYSTEM; TARIFF ADMINISTRATION; TARIFF POLICY OF THE UNITED STATES.

References: Among general financial discussions are: A. S. Bolles, *Financial Hist. of the U. S.* (2d ed., 1884–1886); A. D. Noyes, *Forty Years of Am. Finance, 1865–1906* (1907); D. R. Dewey, *Financial Hist. of the U. S.* (3d ed., 1907); bibliographies in D. R. Dewey, *Financial Hist. of the U. S.*; Channing, Hart and Turner, *Guide to Am. History* (1912).

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FINANCIAL POWERS, CONSTITUTIONAL BASIS OF

The principal financial powers of the Federal Government as expressly defined in the Constitution may be classified as follows: (1) to tax: (2) to expend money (Art. I, Sec. viii, ¶ 1); (3) to borrow (Art. I, Sec. viii, ¶ 2); (4) to coin money (Art. I, Sec. viii, ¶ 5).

Federal Taxation.—Congress is given power to impose all kinds of taxes, "to pay the debts and provide for the common defense and general welfare of the United States." Such taxes must be uniform throughout the country. Direct taxes, with the exception of income taxes exempted from the rule by the Sixteenth Amendment (1913), must be apportioned according to population; export duties are forbidden; and revenue bills shall originate in the House of Representatives, "but the Senate may propose or concur with amendments."

The present discussion is confined to the definition and interpretation of the above clauses as developed by experience. There has been much discussion as to whether the power of taxation is unlimited or restricted by the clause, following a comma, "to pay the debts and provide for the common defense and general welfare." The approved interpretation is that of limitation to those objects, *viz.*, payment of debts, common defense, and general welfare. The discussion which formerly had a vital interest, particularly in its relation to the constitutionality of levying duties for protection of domestic industry, is now largely academic. Congress alone decides as to what will promote general welfare; it therefore taxes not only for education (*see*), but for expositions (*see*), parks in remote sections of the country, the protection of seals whose skins can be used only by the wealthy; the preservation of game (*see*) on a National Bison Range; or for the erection of monuments (*see*). Practically, therefore, the federal power of taxation is unlimited, except in one particular; by judicial interpretation it has been held that Congress cannot tax the instrumentalities of state governments; for example, it may not tax the income of a state judicial officer, the processes of state courts, or state bonds, or a municipal corporation in respect to its revenue.

The provision that taxes shall be uniform refers to uniformity in all parts of the country, not to uniformity of incidence; one rate may be imposed upon an individual and another upon a corporation, provided that they bear alike in all sections. This clause has created some embarrassment in dealing with the new insular possessions, the Philippine Islands and Porto Rico, but the Supreme Court has decided that as these possessions are not foreign countries, the ordinary tariff duties on imports do not apply. There is difficulty in the levying of direct taxes (*see* TAXES, DIRECT), due to uncertainty as to the meaning of the term direct.

The courts have decided that while a tax on individual income is a direct tax, a tax on the income of corporations (*see* CORPORATIONS, TAXES ON) is indirect; so, too, a tax on state bank note circulation (*see* BANK NOTES). The adoption of the Sixteenth Amendment in 1913, however, authorized the Federal Government to levy a tax on incomes, and the income tax was established by Underwood Tariff Act (*see*).

Although the Constitution undoubtedly intended that the House of Representatives should bear the main responsibility in framing revenue measures, the development of congressional procedure has practically nullified that requirement. The Senate not only freely amends bills, but in one instance, 1871, completely revised a House bill by substituting for a brief bill of four lines covering rates on two commodities, a measure of general revision, twenty pages in length. In all of the recent tariff bills the Senate has been powerful in the final determination of rates.

Federal Appropriations and Expenditures.—The only constitutional references to the expenditure of money are that no money shall be drawn from the Treasury except in consequence of appropriations made by law; and that appropriations for the Army shall not be for a longer term than two years (Art. I, Sec. ix, ¶ 7; Sec. viii, ¶ 12). Under the general division of powers between the executive and administrative branches, the President is given little opportunity to participate in the framing of a budget (*see*), and this separation, by many considered unfortunate, is partly responsible for the haphazard adjustment of revenue and expenditure characteristic of American finance.

Federal Power to Borrow.—The power to borrow is unlimited as to method. Congress may borrow by the sale of bonds or by the issue of Treasury notes either with or without interest. Under this power it has been decided that Congress may charter a bank which may act as an agency in securing public loans (McCulloch *vs.* Maryland); and the application of this principle justifies the creation of national banks which are obliged to invest in Government securities. So unrestricted are the conditions under which the Government may borrow, that the Supreme Court has decided that promissory notes bearing no interest may be made legal tender; the power to borrow money includes the power to issue obligations in any appropriate form; and, if desired, in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and trade (*see* LEGAL TENDER CONTROVERSY).

Coinage.—Under coinage it has been held by some that the power does not refer exclusively to the making of metallic money, but also includes the issue of paper money. This opinion has been endorsed by a federal judge (Justice Strong, 52 *Pa.* 67); and in the legal tender case (*see*), Juilliard *vs.* Greenman (1884), the court held that the issue of legal tender notes is incident to the right of coinage.

Powers of the States.—The provisions of the Federal Constitution relating to the financial powers of states are not explicit (AMENDMENT X); and it has been left to the courts to develop principles under constitutional interpretation which shall guide the states in shaping their financial policies. The only express declaration in the Constitution (Art. I, Sec. x, ¶ 2) on taxation prohibits states from levying import or export duties, except what may be necessary to execute inspection laws, nor shall they lay any duty on tonnage. States cannot tax any of the instrumentalities of the Federal Government; they may not tax land or buildings owned by the National Government, or bonds or currency issued by it, unless Congress waives its sovereign right and grants the privilege, as it has (1894) in the case of Treasury notes. That part of the capital stock of a national bank invested in United States bonds may not be taxed to the bank, though shareholders may be taxed on their certificates of stock. Nor can federal officials be taxed on their official income. A corporation chartered by Congress, if undertaking functions of the Federal Government, may not be taxed; thus the property of branches of the Second United States Bank was exempt, and so the franchise and property of the Pacific Railroad which was engaged in carrying mails and troops during the Civil War.

The exclusive power of Congress to regulate foreign and interstate commerce (Art. I, Sec. viii, ¶ 3) deprives states of the right to tax commercial operations between this and foreign countries or between states. A state cannot levy a special tax on sales made by importers or dealers in goods not produced or manufactured in the state, or bills of exchange drawn in one state and payable in another, or an occupation tax on telegraph companies, or tax locomotives and cars used as vehicles of interstate commerce. According to the Federal Constitution (Art. IV, Sec. ii, ¶ 1) the citizens of each state are entitled to all the privileges and immunities of citizens of the several states; taxes, therefore, cannot be imposed in abridgment of these privileges. A state cannot tax citizens of other states at higher rates than it imposes on its own citizens; nor can a state impose taxation which is repugnant to treaty obligations. Corporations are not citizens within the meaning of the clause of the Constitution; consequently the rule of uniformity is not here imperative. In general the financial powers of all local governments are delegations from the state governments, and they are subjected to the same constitutional limitations as the states.

A fundamental right underlying the Constitution, but which has been given distinct enunciation by the Fourteenth Amendment, since its adoption in 1868, has had an important

influence upon state taxation: "Nor shall any state deprive any person of life, liberty or property without due process of law" (*see* DUE PROCESS OF LAW). As McClain writes: "There must be a procedure of some kind to fix the valuation of the property for purposes of taxation, and some apportionment of taxes on the basis of such valuation, and the taxpayer must have some kind of notice to enable him to pay before his property is seized. . . . 'Due process of law' in this connection means that taxes must be for a public purpose, and imposed and collected in the usual methods applicable in the collection of revenue."

It is difficult to draw the line between public and private purposes, and often the decision must be made by the courts. The following are illustrations of taxes held to be for private purposes: a tax to aid private parties or corporations to establish themselves in business or manufactures; a tax to supply a fund to loan to individuals who suffered from the Boston fire of 1872; a tax to supply destitute farmers with provisions and seeds; a tax to build a dam which might, at discretion, be used for private purposes. Notwithstanding these adverse decisions, legislatures expend money for similar private purposes, and taxes are diverted to such objects. The difficulty is to apply the test at the time of collection of the tax. As Cooley says, if the tax law on its face discloses no illegality, there can be no remedy: "An intent to misapply some of the revenue produced cannot be a ground of illegality in the tax itself."

State constitutions often impose certain fundamental restrictions, as that taxation shall be equal and uniform; that all taxes shall be imposed in exact proportion to the value of property; that taxation shall be ad valorem; that the property of corporations shall be taxed the same as that of individuals, that taxes shall be proportional and reasonable. They make provision for exemptions (*see*); forbid taxation to be applied for certain purposes, as in aid to private corporations; and restrict municipalities as to their rate of taxation. The varying principles laid down in the constitutions of different states have given rise to different systems of state taxation, which in turn have greatly embarrassed tax reform and the adjustment of revenue measures to new social and business needs. Particularly is this the case since interstate relationships have become so intimate.

See IMPLIED POWERS; INTERNAL IMPROVEMENTS; ORDINANCES, EXECUTIVE; REVENUE, BILLS FOR RAISING; and under CONSTITUTION OF THE UNITED STATES; TAX; TAXATION; TAXES.

References: E. McClain, *Const. Law in the U. S.* (2d ed., 1910), 119–147, bibliographies, 119, 143; T. M. Cooley, *Law of Taxation* (2d ed., 1886), chs. iii, iv, vii, *Principles of Const. Law* (3d ed., 1898), 55–66, 73–77, 86, 90–94; J. N. Pomeroy, *Introduction to the Const. Law of the U. S.* (10th ed., 1888), 270 320; D. R. Dewey, *Financial Hist. of the U. S.* (3d ed., 1907), 60–70.

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FINANCIAL STATISTICS

Additional statistical tables relating to coinage will be found under COINAGE AND SPECIE CURRENCY IN THE UNITED STATES, and in regard to bank and treasury note issues under PAPER MONEY IN THE UNITED STATES. Statistics in regard to taxation, Government receipts and expenditures will be found under BUDGETS, FEDERAL; EXPENDITURES, FEDERAL; EXPENDITURES, STATE AND LOCAL. Statistics of public indebtedness will be found under DEBT, PUBLIC, ADMINISTATION OF. The following tables are here appended:

I. Monetary circulation, 1800–1910.
II. Paper currency outstanding, 1862–1910.
III. Amount of each kind of money in the United States, 1865–1909.
IV. Total stock of money 1870–1909.
V. Gold holdings of the Treasury, 1878–1912.
VI. Imports and exports of gold, 1864–1912.
VII. Relation of New York City national banks to entire national banking system, 1870–1909.
VIII. Number of banks, national, state, savings and private banks, and trust companies, 1880–1909.
IX. Ratio of silver to gold, 1790–1910.
X. Banking institutions and their capital, 1870–1910.
XI. National banks, number and capital, loans, deposits and circulation, 1863–1912.
XII. Transactions of the New York Clearing House, 1855–1910.
XIII. Available funds in United States treasury, 1865–1910.
XIV. Public indebtedness, national, state, and local, 1870–1902.
XV. National debt, 1800–1910.
XVI. Changes in national debt, 1860–1910.
XVII. United States bonds outstanding and amount deposited for bank circulation, 1880–1912.
XVIII. Receipts and expenditures of Federal Government, 1860–1910.
XIX. Value of all property in the United States, 1850–1904.

TABLE I. MONETARY CIRCULATION, NOT INCLUDING TREASURY HOLDINGS (1800—1910)

(*Millions*)

Year	Gold	Silver	Gold Certificates	Silver Certificates	U. S. Notes	Treasury Notes of 1890	National Bank Notes	State Bank Notes	U. S. Bank	Miscellaneous	Total Circulation	Per Capita
1800	$16		-------	-------	-------	-------	-------	-------	-------	$11	$27	$4.99
1810	27		-------	-------	-------	-------	-------	-------	-------	28	55	7.60
1820	22		-------	-------	-------	-------	-------	$41	$4	-------	67	6.96
1830	26		-------	-------	-------	-------	-------	48	13	-------	87	6.78
1840	79		-------	-------	-------	-------	-------	107	-------	-------	186	10.91
1850	147		-------	-------	-------	-------	-------	131	-------	-------	278	12.02
1860	228		-------	-------	-------	-------	-------	207	-------	-------	435	13.85
1865	25		-------	-------	$379	-------	$146	-------	-------	165	715	20.58
1870	25		-------	-------	325	-------	290	-------	-------	36	676	17.51
1880	266	69	$8	$6	328	-------	337	-------	-------	-------	973	19.41
1890	374	110	131	298	335	-------	182	-------	-------	-------	1,429	22.82
1900	611	142	201	408	314	$79	300	-------	-------	-------	2,055	26.93
1910	591	208	803	479	335	2	684	-------	-------	-------	3,102	34.33

TABLE II. PAPER CURRENCY OUTSTANDING (1862—1910)

(*Millions*)

Year	Old Demand Notes	U. S. Notes	Treasury Notes of 1890	Fractional Currency	Gold Certificates	Silver Certificates	Certificates Currency	National Bank Notes	Total
1862	$51.1	$96.6	----------	----------	----------	----------	----------	----------	$147.7
1865	.5	431.1	----------	25.0	----------	----------	----------	146.1	602.7
1870	.1	356.0	----------	39.9	$34.5	----------	----------	299.8	730.3
1875	----------	375.8	----------	42.1	21.8	----------	$59.0	354.4	794.2
1880	----------	346.7	----------	15.6	8.0	$12.4	14.3	344.5	727.2
1885	----------	346.7	----------	[1] 15.3	140.3	139.9	29.3	318.6	960.9
1890	----------	346.7	----------	15.3	157.5	301.5	12.4	186.0	1,007.1
1895	----------	346.7	$146.1	15.3	48.5	328.9	55.8	211.7	1,097.2
1900	----------	346.7	76.0	15.3	227.8	416.0	3.7	309.6	1,395.1
1905	----------	346.7	9.4	15.3	716.3	465.3	----------	495.7	2,049.0
1910	----------	346.7	3.7	15.3	862.9	489.1	----------	713.4	2,431.1

[1] Estimated; probably the larger part of it is lost or destroyed.

TABLE III. AMOUNT OF EACH KIND OF MONEY IN THE UNITED STATES (1865—1909)

(*Millions*)

Year	Gold Coin, Including Bullion in Treasury.	Standard Silver Dollars	Subsidiary Silver	Fractional Paper Currency	State Bank Notes	Treasury Notes of 1890	U. S. Notes	National Bank Notes	Total
1865	----------	----------	----------	$25	143	----------	$431	$146	$745
1870	----------	----------	----------	40	2	----------	356	300	698
1875	----------	----------	----------	42	1	----------	376	354	773
1880	$352	$70	$72	----------	----------	----------	347	344	1,186
1885	589	209	75	----------	----------	----------	347	319	1,537
1890	696	380	77	----------	----------	----------	347	186	1,685
1895	636	402	77	----------	----------	$146	347	212	1,819
1900	1,034	490	83	----------	----------	76	347	310	2,340
1905	1,358	559	115	----------	----------	9	347	496	2,883
1909	1,642	564	159	----------	----------	4	347	690	3,406

TABLE IV. TOTAL STOCK OF MONEY (1870—1909)

(*Millions*)

Year	Total Money in the U. S.	Money in the Treasury [1]	Money in Reporting Banks	Money not in Treasury or Banks	Percentage in Treasury	Percentage in Banks	Percentage not in Treasury or Banks
1870	$722.8	$47.6	$187.6	$487.6	$7	$26	$67
1880	1,185.5	212.1	274.3	699.1	18	23	59
1890	1,685.1	255.9	488.1	941.1	15	29	56
1900	2,339.7	284.6	749.9	1,305.2	12	32	56
1909	3,406.3	300.1	1,452.0	1,654.2	9	43	48

[1] Not including certificates.

TABLE V. GOLD HOLDINGS OF THE TREASURY (1878—1912)

(Millions)

Year	Amount	Held Against Certificates	Net	Year	Amount	Held Against Certificates	Net
1878	$128.5	$24.9	$103.6	1896	$144.0	$42.3	$101.7
1879	135.2	15.3	120.0	1897	178.1	37.3	140.8
1880	126.1	8.0	118.2	1898	202.8	35.8	167.0
1881	163.2	5.6	157.4	1899	273.4	32.7	240.7
1882	148.5	5.0	143.5	1900	421.1	200.6	220.6
1883	198.1	59.8	138.3	1901	494.3	245.7	248.6
1884	204.9	71.1	133.7	1902	560.2	306.4	253.8
1885	247.0	126.7	120.3	1903	631.4	377.3	254.2
1886	232.8	76.0	156.8	1904	681.8	467.7	216.2
1887	278.1	91.2	186.9	1905	706.6	485.2	221.4
1888	313.8	119.9	193.9	1906	807.1	516.6	290.5
1889	303.5	116.8	186.7	1907	904.7	600.1	304.6
1890	321.6	131.4	190.2	1908	1,004.9	783.0	221.9
1891	238.5	120.9	117.7	1909	1,042.7	815.0	227.7
1892	255.6	141.2	114.3	1910	1,045.2	802.8	242.4
1893	188.5	93.0	95.5	1911	1,163.9	930.4	233.5
1894	131.2	66.3	64.9	1912	1,207.5	943.4	264.1
1895	155.9	48.4	107.5				

TABLE VI. IMPORTS AND EXPORTS OF GOLD, SHOWING NET BALANCE (1864—1912)

(Millions)

Fiscal Year	Excess of Exports Over Imports	Excess of Imports Over Exports	Fiscal Year	Excess of Exports Over Imports	Excess of Imports Over Exports
1864	$89.5	------	1889	$49.6	------
1865	61.9	------	1890	4.3	------
1866	63.0	------	1891	68.1	------
1867	22.1	------	1892	.5	------
1868	63.7	------	1893	87.5	------
1869	21.9	------	1894	4.6	------
1870	21.5	------	1895	30.1	------
1871	59.9	------	1896	78.9	------
1872	40.8	------	1897	------	$44.6
1873	36.1	------	1898	------	105.0
1874	14.5	------	1899	------	51.4
1875	53.2	------	1900	3.7	------
1876	23.1	------	1901	------	12.9
1877	.3	------	1902	------	3.5
1878	------	$4.2	1903	2.1	------
1879	------	1.0	1904	------	17.6
1880	------	77.1	1905	38.9	------
1881	------	97.4	1906	------	57.6
1882	------	1.7	1907	------	63.1
1883	------	6.1	1908	------	75.9
1884	18.3	------	1909	47.5	------
1885	------	18.3	1910	75.2	------
1886	22.3	------	1911	------	51.1
1887	------	33.2	1912	8.4	------
1888	------	25.5			

TABLE VII. RELATION OF NEW YORK CITY NATIONAL BANKS TO ENTIRE NATIONAL BANKING SYSTEM (1870—1909)

(Percentages of Total)

Year	Loans	Lawful Money Reserve	Individual Deposits	Banks, etc. Government, Other Deposits,
1870	24	45	35	32
1880	21	43	30	46
1890	15	31	15	38
1900	21	38	17	40
1909	18	36	16	33

TABLE VIII. NUMBER OF BANKS IN THE UNITED STATES (1880—1909) [1]

(National, State, Savings and Private Banks and Trust Companies)

Section	Number of Banks				Number of Inhabitants to Each Bank			
	1880	1890	1900	1909	1880	1890	1900	1909
New England States	1,084	1,114	1,108	1,080	3,699	4,219	5,046	5,795
Eastern States	1,954	1,455	1,783	2,715	6,016	7,919	9,594	7,418
Southern States	675	1,051	1,617	5,143	22,603	17,438	13,655	4,950
Middle Western States	2,285	2,664	3,732	7,709	6,906	7,269	6,183	3,371
Western States	359	1,503	1,648	4,331	5,452	2,540	3,106	1,555
Pacific States	175	414	490	1,481	7,964	5,480	6,294	2,461
United States	6,532	8,201	10,378	22,459	7,678	7,635	7,337	3,934

[1] Materials in *Statistics for the U. S.* (issued by National Monetary Commission, 1910).

TABLE IX. RATIO OF BULLION VALUE OF SILVER TO GOLD (1790—1911)

Year	Commercial Ratio	Bullion Value of Silver Dollar	Year	Commercial Ratio	Bullion Value of Silver Dollar
1790	15.04	------	1860	15.29	1.045
1800	15.68	------	1870	15.57	1.027
1810	15.77	------	1880	18.05	.886
1820	15.62	------	1890	19.75	.809
1830	15.82	------	1900	33.33	.479
1840	15.62	$1.023	1910	38.22	.418
1850	15.70	1.017	1911	38.33	.417

TABLE X. BANKING INSTITUTIONS AND THEIR CAPITAL (1870—1910)

Year	Number				Capital, Including Surplus, (*Millions*)			
	National Banks	State Banks	Trust Companies	Private Banks	National Banks	State Banks	Trust Companies	Private Banks
1870	1,612	325	----------	----------	$518.9	$86.5	----------	----------
1875	2,076	551	35	----------	634.7	75.8	$28.8	---------
1880	2,076	620	30	2,802	574.0	109.6	24.7	$76.1
1885	2,689	975	40	----------	672.8	156.0	37.1	----------
1890	3,484	2,101	149	1,344	854.6	240.6	105.2	50.5
1895	3,715	3,774	242	1,070	906.0	324.5	173.1	40.4
1900	3,732	4,369	290	989	877.7	328.4	239.5	22.5
1905	5,668	7,794	683	1,028	1,205.0	534.2	524.4	29.4
1910	7,145	12,166	1,091	934	1,634.5	435.8	700.0	18.9

TABLE XI. NATIONAL BANKS (1863—1912)

Year[1]	Number of Banks	Capital and Surplus (*Millions*)	Loans (*Millions*)	Deposits (*Millions*)	U. S. Bonds Held (*Millions*)	Circulation (*Millions*)
1863	66	7.2	5.4	9.5	5.6	----------
1864	508	88.8	93.2	157.0	108.0	45.2
1865	1,517	431.9	487.2	723.3	427.7	171.3
1866	1,644	469.8	603.3	735.5	426.8	280.2
1867	1,642	486.7	609.7	680.9	418.9	293.9
1868	1,643	498.6	657.6	726.2	416.6	295.7
1869	1,617	513.5	682.9	641.9	384.1	293.6
1870	1,615	524.4	715.9	642.8	378.5	291.8
1871	1,767	559.4	831.5	798.7	410.3	315.5
1872	1,919	589.9	877.2	769.5	409.6	333.5
1873	1,976	611.4	944.2	811.6	411.9	339.1
1874	2,004	622.7	954.4	856.1	411.2	333.2
1875	2,088	639.2	984.7	855.1	398.4	318.3
1876	2,089	632.0	931.3	842.1	385.0	591.5
1877	2,080	602.2	891.9	788.4	381.8	291.9
1878	2,053	583.0	834.0	830.3	442.3	301.9
1879	2,048	568.8	878.5	935.4	428.4	313.8
1880	2,090	578.1	1,041.0	1,152.3	401.4	317.3
1881	2,132	591,9	1,173.8	1,378.0	419.8	320.2
1882	2,269	615.1	1,243.2	1,394.8	395.0	314.7
1883	2,501	651.7	1,309.2	1,334.0	382.0	310.5
1884	2,664	671.3	1,245.3	1,235.7	357.8	289.8
1885	2,714	674.1	1,306.1	1,416,3	339.4	268.8
1886	2,852	705.4	1,450.9	1,498.1	290.9	228.7
1887	3,049	752.4	1,587.5	1,604.3	223.7	167.3
1888	3,140	778.1	1,684.2	1,782.1	232.6	151.7
1889	3,290	810.1	1,817.2	1,947.3	194.9	128.4
1890	3,540	864.0	1,986.0	2,020.6	170.6	122.9
1891	3,677	895.0	2,005.4	2,039.1	175.9	131.3
1892	3,773	925.4	2,171.0	2,309.9	183.4	143.4
1893	3,781	924.3	1,843.6	1,814.7	224.0	182.9
1894	3,755	914.0	2,007.1	2,269.0	225.5	172.3
1895	3,712	903.6	2,059.4	2,210.1	234.8	182.5
1896	3,676	896.2	1,893.2	2,028.1	262.4	209.9
1897	3,610	877.8	2,066.8	2,515.2	259.9	198.9
1898	3,585	869.1	2,172.5	2,804.9	339.1	194.5
1899	3,595	854.2	2,516.0	3,458.4	329.9	200.3
1900	3,871	892.1	2,709.9	3,698.6	408.7	283.9
1901	4,221	934.9	3,051.7	4,229.8	444.4	323.8
1902	4,601	1,031.9	3,314.2	4,533.5	456.9	318.0
1903	5,002	1,124.1	3,508.6	4,532.4	522.7	375.0
1904	5,412	1,177.2	3,757.9	5,130.2	540.2	411.2
1905	5,833	1,229.1	4,071.2	5,554.8	561.8	485.5
1906	6,137	1,325.3	4,331.4	5,896.7	628.8	517.9
1907	6,544	1,444.7	4,709.0	6,075.5	660.3	551.9
1908	6,853	1,487.0	4,781.5	6,616.1	717.1	613.7
1909	6,977	1,542.6	5,158.4	7,077.4	731.0	658.0
1910	7,372	1,605.1	5,467.2	7,140.0	740.6	674.8
1911	7,301	1,695.4	5,402.6	----------	766.2	697.0
1912	7,372	1,727.5	5,810.4	----------	778.1	708.7

[1] Figures are given for the date nearest October 1.

TABLE XII. TRANSACTIONS OF THE NEW YORK CLEARING HOUSE (1855—1912)

(*Millions*)

Year	Clearings	Balances Paid in Money	Percentage of Balances to Clearings	Year	Clearings	Balances Paid in Money	Percentage of Balances to Clearings
1855	$5,363	$290	5.4	1890	37,661	1,753	4.7
1860	7,231	381	5.3	1895	28,264	1,897	6.7
1865	26,032	1,036	4.0	1900	51,965	2,730	5.3
1870	27,805	1,036	3.7	1905	91,879	3,954	4.3
1875	25,061	1,409	5.6	1910	102,554	4,195	4.1
1880	37,182	1,517	4.1	1911	84,420	4,380	4.7
1885	25,251	1,295	5.1	1912	96,672	5,051	5.2

TABLE XIII. AVAILABLE FUNDS IN THE TREASURY OF THE UNITED STATES (1865—1912)

(*Millions*)

Year	In Treasury Offices	In Depository Banks	Total	Number of Depository Banks
1865	$2.4	$24.1	$26.4	330
1866	78.4	34.1	112.5	382
1867	135.3	25.9	161.2	385
1868	92.4	22.8	115.1	370
1869	117.9	8.6	126.5	276
1870	105.3	8.2	113.5	148
1871	84.8	6.9	91.7	159
1872	61.9	12.5	74.4	163
1873	52.5	7.2	59.8	153
1874	64.7	7.4	72.2	154
1875	51.7	11.6	63.3	145
1876	51.4	7.5	58.9	143
1877	84.4	7.2	91.7	145
1878	130.6	46.9	177.5	124
1879	159.0	208.0	367.1	127
1880	160.5	7.8	168.3	131
1881	174.0	8.7	182.7	130
1882	152.9	9.4	162.3	134
1883	151.6	9.8	161.4	140
1884	154.6	10.5	165.0	135
1885	171.9	10.8	182.6	132
1886	218.3	13.8	232.1	160
1887	188.6	19.0	207.6	200
1888	189.4	54.7	244.1	290
1889	167.6	43.1	210.7	270
1890	164.1	26.8	190.8	205
1891	135.4	21.4	156.8	185
1892	118.7	10.5	129.2	159
1893	114.9	10.0	124.8	160
1894	108.5	10.4	118.9	155
1895	185.4	11.0	196.3	160
1896	258.2	11.4	269.6	160
1897	232.3	12.6	244.5	168
1898	175.4	33.8	209.3	172
1899	202.5	72.4	274.8	357
1900	64.2 [1]	92.6	156.8	442
1901	85.0	93.4	178.4	448
1902	95.0	117.1	212.2	577
1903	98.7	140.0	238.7	713
1904	69.8	102.3	172.1	842
1905	80.7	64.8	145.5	837
1906	100.0	80.7	180.7	928
1907	105.3	166.8	272.1	1,255
1908	57.5	147.7	245.2	1,436
1909	65.9	60.4	126.4	1,414
1910	66.3	40.6	106.9	1,380
1911	104.1	36.0	140.2	1,362
1912	129.2	37.9	167.2	1,352

[1] By act of March 14, 1900, a reserve fund of $150,000,000 was set aside for the redemption of U. S. notes, and not included henceforth in "available" balance.

TABLE XIV. PUBLIC INDEBTEDNESS (1870—1902)

(*Millions*)

Year	National Government		States and Territories		Counties		Cities, Townships and Local Districts		Total	
	Total	Per Capita	Total	Per Capita	Total	Per Capita	Total	Per Capita	Total	Per Capita
1870	$2,331	$60.46	$353	$9.15	$188	$4.87	$328	$8.51	$3,200	$82.99
1880	1,919	38.27	275	5.48	124	2.47	724	14.44	3,043	60.66
1890	852	13.60	211	3.37	145	2.32	781	12.47	1,989	31.76
1902	925	11.77	235	2.99	197	2.50	1,433	18.24	2,790	35.50

TABLE XV. NATIONAL DEBT (1800—1910)

(*Millions*)

Year	Total (Less Cash in Treasury)	Per Capita	Interest-Bearing Debt	Annual Interest Charge	Interest Per Capita
1800	$83.0	$15.63	$83.0	$3.4	$0.64
1810	53.2	7.34	53.2	3.2	.44
1820	91.0	9.44	91.0	5.2	.53
1830	48.6	3.77	48.6	1.9	.15
1840	3.6	.21	3.6	.2	.01
1850	63.5	2.74	63.5	3.8	.16
1860	60.0	1.91	64.6	3.4	.11
1870	2,331.2	60.46	2,046.5	118.8	3.08
1880	1,919.3	38.27	1,724.0	79.6	1.59
1890	890.8	14.15	725.3	29.4	.47
1900	1,107.7	14.58	1,023.5	33.5	.44
1910	1,046.4	11.35	913.3	21.3	.23

TABLE XVI. CHANGES IN NATIONAL DEBT (1860—1912)[1]

(*Millions*)

Year	Receipts from Issue of Bonds and Other Securities	Redemption of Bonds and Other Securities	Total Debt Less Cash in Treasury
1860	$20.8	$13.9	$60.6
1861	41.9	18.7	87.7
1862	529.8	96.1	505.3
1863	775.2	179.0	1,111.4
1864	1,088.2	388.0	1,709.5
1865	1,474.5	607.2	2,674.8
1866	612.3	530.3	2,636.0
1867	486.7	586.9	2,508.2
1868	544.4	610.5	2,480.9
1869	101.4	140.4	2,432.8
1870	31.6	156.8	2,331.2
1871	91.6	216.7	2,247.0
1872	173.7	292.8	2,149.8
1873	38.7	101.7	2,105.5
1874	183.2	177.8	2,104.1
1875	133.1	151.2	2,090.0
1876	133.2	166.1	2,060.9
1877	141.3	151.2	2,109.3
1878	198.9	144.0	1,999.4
1879	619.1	479.9	1,996.4
1880	73.1	283.2	1,919.3
1881	.7	87.2	1,819.7
1882	.2	166.5	1,675.0
1883	304.4	438.4	1,538.8
1884	1.4	101.3	1,438.5
1885	.1	46.0	1,375.4
1886	------	44.6	1,282.1
1887	------	128.0	1,175.2
1888	------	83.1	1,063.0
1889	------	138.6	975.9
1890	------	125.0	890.8
1891	------	111.4	851.9
1892	------	24.3	841.5
1893	------	.7	839.0
1894	58.6	.3	899.3
1895	92.5	2.5	901.7
1896	142.3	7.3	855.3
1897	------	11.4	986.7
1898	------	29.9	1,027.1
1899	199.2	14.6	1,155.3
1900	.1	55.9	1,107.7
1901	------	50.8	1,044.7
1902	------	70.3	969.5
1903	1.5	27.5	925.0
1904	.5	19.9	967.2
1905	------	.6	989.9
1906	.5	1.7	964.4
1907	32.7	30.6	878.6
1908	25.4	34.4	983.8
1909	30.7	15.4	1,023.9
1910	------	.8	1,046.4
1911	18.1	.2	1,015.8
1912	33.6	1.0	1,027.6

[1] Includes premiums both on receipts and disbursements.

TABLE XVII. UNITED STATES BONDS OUTSTANDING, AND AMOUNT DEPOSITED FOR BANK CIRCULATION (1880—1912)

(Millions)

Year	Outstanding	Deposited	Percentage Deposited	Year	Outstanding	Deposited	Percentage Deposited
1880	$1,774.6	$361.7	20.3	1897	$912.0	$230.5	$25.2
1881	1,690.2	360.5	21.3	1898	861.4	220.2	25.5
1882	1,514.4	360.7	23.8	1899	1,046.0	229.7	21.9
1883	1,388.9	356.6	25.0	1900	1,023.5	284.4	27.8
1884	1,277.2	334.1	26.1	1901	987.1	326.1	33.0
1885	1,246.8	312.1	25.0	1902	931.1	317.0	34.0
1886	1,196.6	276.0	23.0	1903	914.5	375.1	41.0
1887	1,072.3	192.0	17.9	1904	895.2	416.0	46.4
1888	1,001.1	178.3	17.8	1905	895.2	468.1	52.2
1889	880.5	148.1	16.8	1906	895.2	520.6	58.1
1890	775.9	145.2	18.7	1907	894.8	558.4	62.4
1891	675.2	142.5	21.1	1908	897.5	628.2	69.9
1892	649.7	163.2	25.1	1909	913.3	660.8	72.3
1893	649.7	176.6	27.1	1910	913.3	687.0	75.2
1894	699.7	201.7	28.8	1911	915.4	698.5	76.3
1895	780.8	207.7	26.5	1912	963.8	724.5	75.2
1896	912.0	228.9	25.1				

TABLE XVIII. RECEIPTS AND EXPENDITURES OF THE FEDERAL GOVERNMENT (1860—1912)[1]

(Millions)

Year	Ordinary Receipts	Ordinary Expenditures	Excess of Receipts over Expenditures	Excess of Expenditures over Receipts
1860	$56.1	$63.2	------	$7.1
1861	41.5	66.7	------	25.1
1862	51.9	469.6	------	422.8
1863	112.1	718.7	------	602.6
1864	243.4	865.0	------	621.9
1865	322.0	1,295.1	------	973.8
1866	519.9	519.0	.1	------
1867	462.8	346.7	116.1	------
1868	376.4	370.3	6.1	------
1869	357.2	321.2	36.0	------
1870	396.0	293.7	102.3	------
1871	374.4	283.2	91.3	------
1872	364.7	270.6	94.1	------
1873	322.2	285.2	36.9	------
1874	299.9	301.2	------	1.3
1875	284.0	274.6	9.4	------
1876	290.1	165.1	25.0	------
1877	281.0	241.3	39.7	------
1878	257.4	237.0	20.5	------
1879	272.3	266.9	5.4	------
1880	333.5	264.8	68.7	------
1881	360.8	259.7	101.1	------
1882	403.5	258.0	145.5	------
1883	398.3	265.4	132.9	------
1884	348.5	244.1	104.4	------
1885	323.7	260.2	63.5	------
1886	336.4	242.5	94.0	------
1887	371.4	267.9	103.5	------
1888	379.3	259.7	119.6	------
1889	387.1	282.0	105.1	------
1890	403.1	297.7	105.3	------
1891	392.6	355.4	37.2	------
1892	354.9	345.0	9.9	------
1893	385.8	383.5	2.3	------
1894	297.7	367.5	------	69.8
1895	313.4	356.2	------	42.8
1896	327.0	352.2	------	25.2
1897	347.7	365.8	------	18.1
1898	405.3	443.4	------	38.0
1899	516.0	605.1	------	89.5
1900	567.2	487.7	79.5	------
1901	587.7	510.0	77.7	------
1902	562.5	471.2	91.3	------
1903	560.4	506.1	54.3	------
1904	539.7	532.2	7.5	------
1905	544.6	563.4	------	18.8
1906	594.7	549.4	45.3	------
1907	663.1	551.7	111.4	------
1908	601.1	621.1	------	20.0
1909	603.6	662.3	------	58.7
1910	675.5	659.7	15.8	------
1911	701.4	654.1	47.3	------
1912	691.8	634.6	37.2	------

[1] Ordinary receipts include receipts from customs, internal revenue, sale of public lands and miscellaneous; ordinary expenditures include disbursements for war, navy, Indians, pensions, interest on debt, and miscellaneous. Neither includes loans, premiums, or postal accounts.

TABLE XIX. VALUE OF ALL PROPERTY IN THE UNITED STATES (1850—1904) [1]

(*Millions*)

Year	Taxable	Exempt	Total	Per Capita
1850	$7,136	------	------	$308 [2]
1860	16,160	------	------	514 [2]
1870	24,055	------	------	624 [2]
1880	------	------	$43,642	870
1890	61,204	$3,833	65.037	1,036
1900	82,305	6,213	88,517	1,165
1904	100,273	6,831	107,104	1,318

[1] For methods of estimating national wealth at different dates, see United States Census Bureau, Special Report, *Wealth, Debt and Taxation* (1907), 27.
[2] Taxable property only.

See ASSESSED VALUATIONS, COMPARATIVE; BANKS AND BANKING ACTS, NATIONAL; COINAGE AND SPECIE CURRENCY; COST OF GOVERNMENT IN THE UNITED STATES; DEBT, PUBLIC, ADMINISTRATION OF; DUTY ON IMPORTS, AVERAGE RATE OF; EXPENDITURES, FEDERAL; PUBLIC ACCOUNTS; STATISTICS, OFFICIAL COLLECTION OF; TARIFF STATISTICS.

References: Financial statistics must be sought for in current public documents, especially *Statistical Abstract of the U. S.*, in which (annual), use tables on "Progress of the U. S.," and index; U. S. Secy. of the Treasury, U. S. Comptroller of the Currency, U. S. Director of Mint, and U. S. Commissioner of Internal Revenue, *Annual Reports* in *Finance Report*; A. Piatt Andrew, *Statistics for the U. S. 1867-1909* (issued by National Monetary Commission, 1910), with supplement, *Financial Diagrams* (1910); U. S. Census Bureau, Special Report on *Wealth, Debt and Taxation* (1909); *Statistics of Cities* (annual); D. R. Dewey, *Financial Hist. of the U. S.*, tables and charts. DAVIS R. DEWEY.

FINES AND FORFEITURES. As a punishment for a crime committed of which the accused has been duly convicted he may be required to pay a penalty in money into the public treasury (or into some specified public fund such as the school fund); or property which he has acquired as the result of his crime or which has been used by him in the perpetration of the crime may become forfeited to the government. In this sense fines and forfeitures are simply forms of criminal punishment. In a more general sense a fine is a penalty for failing to perform an act which it is one's duty to perform and for the nonperformance of which he has undertaken to pay such penalty, as where the members of an association are by its articles or by-laws obligated to pay an additional sum of money on account of delinquency in the payment of specified dues. The term forfeiture is also used in a quite general sense to signify a surrender of property or property rights on failure to comply with some agreed condition. In either case the obligation is enforceable by legal proceedings.

In many of the constitutions (*see* U. S. Const., Amend. VIII) are prohibitions against imposition of excessive fines by way of criminal punishment, such a prohibition being found in the English Bill of Rights (1689). As a constitutional guaranty this provision is of slight significance, as the discretion of the legislative and judicial departments in providing the amount of the fine which may be imposed for any particular class of crimes and the amount to be paid in any particular case within the limit provided by law can not very well be inquired into (*see* CRUEL AND UNUSUAL PUNISHMENTS).

The forfeitures which resulted in England from conviction for a felony or might be imposed by bills of attainder are not recognized under our constitutional system. There is a specific provision in the Federal Constitution (Art. III, Sec. iii, ¶ 2) that no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted, the object being to prevent the sins of the father in this respect being visited on the son. In accordance with this constitutional declaration the Confiscation Acts of 1861 provided that forfeiture of real estate thus confiscated should not extend beyond the natural life of the offender.

See ATTAINDER, BILL OF; CONFISCATION ACTS.

References: Cooper *vs.* Telfair, 4 *Dallas* 14; *Ex parte* Garland, 4 *Wallace* 333; Cummings *vs.* Missouri, 4 *Wallace* 277. E. McC.

FINES AS SOURCES OF REVENUE. Fines and pecuniary penalties are revenues collected under the penal rather than the fiscal power of a government. In modern practice they are the inheritance of the crude financial systems of the middle ages; not only were governments often at a loss to secure revenue by orderly methods of taxation, but there were few penal institutions in which offenders against the law could be imprisoned. For punishment for which capital punishment or physical pain appeared too severe, it was common to provide elaborate schedules of monetary payments or penalties.

Such practices have been retained in certain branches of legal and judicial procedure; they are applied, for example, in case of infraction of the customs laws, as for smuggling, buying goods known to have been smuggled, making

a false invoice, or concealing or destroying an invoice; of the internal revenue laws, for carrying on business of distilling without payment of tax; for failing to give bonds; for obstructing public officers; for distilling during forbidden hours, etc.

Statistics as to the exact amount of a federal revenue collected by fines are unsatisfactory, as these receipts in current finance reports are classed with fees. During the three years 1909–11, the amount collected for fines, forfeitures and penalties in the customs receipts greatly increased. Between 1894 and 1908 the average was only $62,000 a year; but in the next three years, 1909–1911, it averaged $2,100,000 a year.

In local government fines are frequently used as punishment for petty delinquencies, as for drunkenness or failure to obey civil and criminal laws and local ordinances. Under this head are included penalties collected because taxpayers fail to meet their taxes within the time required by law, fines collected by criminal courts; forfeitures in criminal and civil transactions, such as forfeits on criminal bonds or contractors' bonds. In 1908 the penalties collected on the non-payment of the general property tax, in cities of 30,000 population or over, was $2,643,000, as compared with $377,341,000 collected on original levies. From fines and forfeits these same municipalities received $3,894,000. The largest part of this latter sum was derived from fines imposed by courts, and forfeits of deposits for appearance in courts.

See Revenue, Public, Sources of; Sugar Frauds.

References: E. R. A. Seligman, *Essays in Taxation* (2d ed., 1897), 268; C. F. Bastable, *Public Finance* (2d ed., 1895), 154; Commissioner of Internal Revenue, *Annual Report;* Census Bureau, *Special Report, Wealth, Debt, and Taxation* (1909), consult index.

Davis R. Dewey.

FIRE DEPARTMENTS. It is estimated that over $200,000,000 is expended annually in the United States for the equipment and maintenance of fire departments. Such departments are usually classified as "volunteer," "partly paid," or "fully paid." (1) Volunteer departments consist of mechanics, and other laborers, who, when the alarm is sounded, drop their regular work and proceed to the fire; and either give their services gratuitously, or are paid by donations or by the hour while on service. (2) Partly paid departments are those where a limited number, such as the driver and engineer (where there is an engine) are paid so that they may devote their full time to the service, the other members, however, with the exception of a limited few, being volunteers or "call men" who are paid by the hour while on duty. (3) Fully paid departments are those where the entire force consists of men constantly on duty, who sleep in the engine house, and whose one business is fire fighting.

According to some of the leading fire rating schedules of the country, such as the Dean schedule, cities and towns are divided into seven classes, in accordance with the degree of efficiency of the fire department and the rates are fixed accordingly. Some schedules, however, such as the universal mercantile schedule, itemize the good and bad features of the particular fire department under consideration, and make deductions from or additions to the basis rate which is applicable to all properties in the town.

See Fire Limits; Fire Protection; Insurance, Legal Basis and Regulation of.

References: W. D. Matthews, *Manual of Inspections* (1902); City Fire Departments, *Reports.*

S. S. Huebner.

FIRE-EATERS. A term applied in the antebellum days to the radical uncompromising pro-slavery advocates in the South, whose antagonism against the North and eagerness on every occasion to take up the gauntlet to further the cause of slavery went far toward making the war inevitable. Also at a later day to violent extremists, particularly if from the South.

O. C. H.

FIRE LIMITS. A fire limit ordinance may be defined as a "law passed by a city council defining the boundaries of territory (usually including the principal business district) in which only certain kinds of buildings may be constructed." The purpose of such ordinances is to prohibit the construction of frame buildings, and to regulate the construction of buildings which exceed a certain height, with a view to preventing the spread of fires. A joint committee of the senate and assembly of New York, in 1911, gave hearty endorsement to a law which will require the insurance companies to report their amounts at risk in the congested value districts in large cities, so that the public may have exact knowledge as to the manner in which the various companies conduct their underwriting operations. See Fire Departments; Fire Protection; Insurance, Legal Basis and Regulation of.

S. S. H.

FIRE PROTECTION. Fire losses in the United States far exceed those of any other civilized nation, and amount annually to approximately $200,000,000. In proportion to insurable values it has been computed that our national fire waste is from six to twenty times that of any European nation; and that in a normal year our per capita destruction of property by fire exceeds $2.50 as compared with only 33 cents in the six leading cities of Europe. This appalling waste is traceable to a number of factors, such as the common use of wood for the construction of walls, floors and roofs; the limited amount of fireproof

construction; absence of precaution against fire in non-fireproof risks; congestion of business sections in our large cities, and the absence, late adoption, or poor enforcement of efficient municipal building regulations. Fire prevention is a much greater issue today than is insurance against fire.

Protection Against the Spread of Fire.—To reduce the nation's fire waste two main lines of effort can be pursued: (1) to prevent the spread of fire; (2) to prevent the origin of fire. From the standpoint of construction it is customary to classify buildings as "ordinary," "slow burning," or "mill construction," "semi-fireproof," and "fireproof." The slow burning building is so constructed as to make the floors at least three inches in thickness with a view to separating the stories of the building in such a manner that a fire in combustible material will, under ordinary circumstances, require at least one or two hours to burn through the flooring. A fireproof building, on the other hand, is constructed with a view to isolating each floor from those below or above it so effectively that the contents on any floor may be consumed without the fire being able to communicate with other parts of the building. To meet this requirement, the building should be of steel cage construction, all its structural members should be properly insulated, all stairways and elevators should be encased in fireproof shafts; and all the tiers of windows should be fitted with wire glass in fireproof frames. Semi-fireproof buildings, while constructed of non-inflammable materials, differ from fireproof buildings in that their structural members are not properly insulated against heat.

As has been well said, "Every fireproof structure built among combustible buildings might be regarded as a policeman standing between belligerents threatening to destroy each other." While existing buildings cannot be torn down or reconstructed, instant results can be obtained by the adoption and rigid enforcement of statutes and ordinances which will serve: (1) to prescribe the type of building construction permitted within certain city limits, and regulate the equipment of such buildings with fire windows, shutters and doors, with fire extinguishing facilities, with proper electrical fittings, etc.; (2) to regulate the planning of new buildings as regards fire service tanks, boilers, elevator and other floor communication, the localization of dangerous processes, and the subdivision of the property into separate fire areas; (3) to supervise the storage and sale of highly combustible materials; (4) to maintain inspection sufficiently frequent to assure the proper observance of the law on the part of the property owners.

Agencies for Improvement.—Probably no agencies are doing more to improve conditions in the construction of buildings than the National Fire Protection Association and the National Board of Fire Underwriters. The first of these associations formulates rules and standards through its various special committees for the guidance of inspectors, and in its publications makes this information available to architects, builders and property owners. Laboratories are also maintained by this association for the purpose of verifying by proper tests the merits of fire protection facilities and building materials, as claimed by their inventors. The last named organization has prepared a model building code, already adopted by a number of municipalities, copies of which are freely distributed to the officers of our cities. Its expert fire protection engineers also visit the leading cities of the country periodically, with a view to studying and reporting on the conflagration hazard.

Mention should also be made of private efforts along this line, such as the work of the Factory Mutuals. The insurance companies, likewise, through the application of the schedule system of rating, exert a very wholesome influence. By computing the rate according to an elaborate system of specific additions for defects or deductions for specially good features, instead of quoting the rate in a single lump sum, the insured is enabled to see just how certain changes in construction, or management, will give him a lower rate. This direct appeal to the pocket book operates not only to improve existing risks, but leads to the better construction of new risks, most of which are now planned with reference to the advantages in fire insurance rates resulting from improvements suggested by the rating systems of the several fire underwriters' associations.

FIRE LOSS PER CAPITA

Year	Total Loss	Per Capita Loss
1875	$78,102,285	$1.77
1880	74,643,400	1.48
1885	102,818,796	1.83
1890	108,993,792	1.73
1895	142,110,233	2.06
1900	160,929,805	2.24
1905	165,221,650	1.96
1906	518,611,800	6.05
1907	215,084,709	2.46
1908	217,885,850	2.44
1909	188,705,150	2.08
1910	214,003,300	2.32
1911	217,004,575	2.31

Protection Against the Outbreak of Fires.—But the fire waste of the country, especially that of initial fires, may be much further reduced by equipping buildings with fire extinguishing facilities in proportion to area and height, and with due regard to the fire hazard involved. Such facilities are standpipes with siamese connections, fire pails, post hydrants, public and private fire departments, stationary steam fire pumps, chemical extinguishers, public and private waterworks systems, stationary or portable clock systems, automatic sprinkler systems and electrical notification systems.

By far the most important of these several devices, especially as regards factory and mercantile risks, is the automatic sprinkler, which "without the assistance of human effort will discharge water almost simultaneously with the outbreak of the fire, will apply the water locally in the very spot where combustion is taking place, will distribute the discharge of water in such a manner as to accomplish the greatest good with the least amount of water, and will give immediate notice of the existence of a fire." It consists of an arrangement of pipes spread under all ceilings in all parts of a building and equipped with a sprinkler for each 75 or 80 square feet of floor area. The system of pipes is supplied automatically with water from elevated tanks, pumps or city connections. Each sprinkler head is kept closed with fusible solder, the melting point of which is adjusted to vary from 165° to 360° according to the nature of the risk. In case of fire the resulting rise in temperature will melt the fusible metal, thus opening the sprinkler and automatically permitting the discharge of a fine spray of water at the rate of about 30 gallons per minute at 30 pounds pressure. To prevent unnecessary water damage, the sprinkler system also contains an automatic alarm valve so constructed that the flow of water in the pipes will operate an electrical or mechanical gong at the desired points.

The remarkable efficacy of the automatic sprinkler is demonstrated by the experience of the Factory Mutuals; although they insure the most hazardous type of risks, the rate on woolen mills, for example, largely through the improvement of fire prevention methods, has been reduced from an average rate ranging from $1 to $2 per $100 of insurance to about four cents. The records (extending over a period of twelve years) of 8,942 fires, in risks equipped with sprinklers, shows that in nearly 6,000 cases the fire was extinguished by the sprinklers unassisted; and that in less than six per cent of the fires did the system prove ineffective. So large is the reduction in the fire insurance rates (varying from 30 to 75 per cent of the premium) granted by insurance companies to property owners who will instal a sprinkler service, that the saving in premiums alone will often return the entire cost of the sprinkler system within a period of three years. In general the adoption of the less costly forms of fire extinguishing facilities constitutes a good investment. There is also the elimination of the loss of time and demoralization of business which follow every fire.

See Fire Department; Fire Limits; Insurance, Legal Basis and Regulation of.

References: The Joint Committee of the Senate and Assembly of New York, *Report on Fire Insurance Business*, February 1, 1911; Illinois Fire Insurance Commission, *Report*, January 4, 1911; Spectator Co., *Fire Prevention and Protection* (1904); E. W. Crosby, and H. A. Fiske, *Hand Book of Fire Protection* (1909); F. C. Moore, *Fire Insurance and How to Build* (1903); S. S. Huebner, *Property Insurance* (1911), ch. xx; *Am. Year Book, 1911*, 254, and year by year. S. S. Huebner.

FIRST INSTANCE, COURT OF. See Court of First Instance.

FISCAL YEAR. By the fiscal year is meant the consecutive twelve months to which the financial accounts of a government apply. Until 1843 the fiscal year of the Federal Government ended on September 30; since that date it ends June 30. The reason this earlier date was selected was to give ample time to furnish estimates to the heads of departments and the President, for consideration before the meeting of Congress on the first Monday in December. In local government there is no uniformity in the fiscal year, but there is a growing tendency to make it conform to the calendar year.

D. R. D.

FISH COMMISSIONS. In nearly every American state there now exists a commission or board, appointed by the governor, and holding office at his pleasure, which administers fishery affairs under authority conferred by the legislature. Massachusetts was the first state to set up a fish commission (1866). Positions on fish commissions are often salaried, sometimes purely honorary, and in some cases are held *ex officio* by the governor or other elective officers.

Fish commissions are often combined with game commissions (California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, Ohio, Washington), or with oyster or shellfish commissions (North Carolina, Texas, Virginia). In some states (Maine) there are separate commissions for inland fisheries and for sea and shore fisheries; and in some states (New York, West Virginia) game and forestry matters are considered by the same board, commission, or department that is in charge of fisheries.

The functions of the state fish commissions are to advise the executive and the legislature, to enforce fishery laws, to propagate and distribute food and game fishes, to collect revenue from the licensing of fishery apparatus or operations, to allot (for lease or sale) waters for cultivation of shellfish, and in general to promote the local fishery interests.

The United States Fish Commission, established in 1871, is the medium provided by Congress for dealing with the fishery matters which come under federal jurisdiction. Until 1903 it was independent, the single commissioner being appointed by and reporting directly to the President; but on the organization of the Department of Commerce and Labor it became a component, and its name was changed

to Bureau of Fisheries. Upon the division of the department, in 1913, the Bureau of Fisheries remained a part of the Department of Commerce. Its duties, successively enlarged by Congress, include propagation and distribution of food fishes and other aquatic animals and stocking of public and private waters therewith, study of the coastal and interior waters and their inhabitants in the interests of the fisheries and fish culture, collection of statistics of the fishing industry, study of the methods and relations of the fisheries, protection of salmon, seal, and other fisheries of Alaska, of Alaskan fur-bearing animals, and of sponge fishery off the Florida coast.

See COMMISSIONS IN AMERICAN GOVERNMENT; FISHERIES, RELATIONS OF GOVERNMENT TO.

References: State fish commissions, *Annual Reports;* U. S. Fish Commission, Bureau of Fisheries, *Reports* (annual since 1871), *Bulletins* (annual since 1880), including the following: G. Brown Goode, *Status of the U. S. Fish Commission* (1884), 1139–1184; Hugh M. Smith, *U. S. Bureau of Fisheries: Its Establishment, Functions, Organization, Resources, Operations, and Achievements* (1908), 1365–1411, pl. cxliii–clvi. HUGH M. SMITH.

FISH, HAMILTON. Hamilton Fish (1808–1893) was born at New York City, August 3, 1808. In 1830 he was admitted to the bar. His political career began in 1834, when he was an unsuccessful candidate for the assembly on the Whig ticket. From 1843 to 1845 he was a member of the National House of Representatives. In 1847 he was elected lientenant-governor of New York for the remainder of the term of Addison Gardiner, resigned, and the next year was chosen governor. In 1851 he entered the United States Senate, where he served one term, becoming a Republican upon the formation of that party. His chief prominence in the Senate was due to his outspoken opposition to the Kansas-Nebraska Act. In 1862 he was appointed one of the commissioners to visit federal prisoners in Confederate prisons, and opened the way for the exchange of prisoners later agreed upon. In 1869 he became Secretary of State, holding the office throughout Grant's administrations. His principal services were as a member of the joint high commission which negotiated the treaty of Washington, in 1872; and the settlement of the *Virginius* affair, in 1873, with Spain. He died at Glen Clyffe, N. Y., September 7, 1893. See REPUBLICAN PARTY; STATE, DEPARTMENT OF. **References:** A. B. Gardiner, in *N. Y. Genealogical and Biographical Record,* XXV (1894); W. A. Dunning, *Reconstruction* (1906); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), VI, VII. W. MACD.

FISHERIES, BUREAU OF. The Bureau of Fisheries was one of the bureaus of the Department of Commerce and Labor (*see*), until that Department was divided (Mar. 4, 1913); since then it has been a bureau of the Department of Commerce, and is under the direction of a commissioner. The function of the bureau is to foster the fisheries of the United States. The most important branches of the work of the bureau are the propagation of food-fishes and the inspection of certain commercial fisheries. In recent years, much work has been done in connection with the Alaska salmon and fur-seal fisheries. In 1912 the fisheries service extended its activities by means of an increased personnel, and with the usual inspection work and statistical canvas of the fisheries, began important observations looking to the development of the so-called minor fur resources of the territory. The value of the furs of this character in 1911 was $370,573. In the states there has been coöperation with state fisheries commissions (*see* FISH COMMISSIONS). The propagation of food-fishes is carried on in thirty-two fish hatcheries, and ninety-two auxiliaries and egg-collecting stations, located in thirty-one states. During the year, 1911–12, the total output of fishes and eggs was 3,687,535,911; and applications for fish for stocking purposes were received for planting in more than 10,000 different bodies of water. The bureau also prosecutes biological inquiries and experiments for the promotion of scientific knowledge concerning fishes and marine animals. See FISHERIES, RELATIONS OF GOVERNMENT TO. **References:** Dept. of Commerce and Labor, *Annual Reports* (1903–1913); Dept. of Commerce, *Annual Reports.*

A. N. H.

FISHERIES, INTERNATIONAL. The modern doctrine of the freedom of the open or high seas rests neither upon an analogy to the doctrines of the older Roman law, denying the possibility of private property in waters (this would negate all claims to maritime jurisdiction), nor upon the scholastic notion that the fluidity of water renders it unappropriable, and hence not an object of sovereignty (this by a parity of reasoning would deny any jurisdiction over the air-space above), but upon the universally accepted principle of jurisdictional rights over the marginal seas as appurtenant to land. Some states have successfully urged claims to the land beyond the strict three-mile-limit (*see*), particularly where bays extend *intra fauces terrae* with entrances wider than six miles (*e. g.,* Chesapeake and Delaware Bays). In the case of bays the sinuosities of the coast render the line of three miles inconvenient and difficult of determination. Therefore the doctrine known as the "headlands doctrine" (*see*) has found considerable favor in recent times, according to which a straight line drawn from headland to headland determines the extent of territorial jurisdiction.

As there is some point at which the jurisdiction of every state ends, the great waste of waters beyond, called the open or high seas, is necessarily free. The open sea is free as a highway and in time of peace one state may not interfere with the vessels of another so using it. The right of taking the products of the sea is similarly complete, although the action of the tribunal in the Fur Seal Arbitration of 1893 might appear to modify it (*see* SEAL FISHERIES). Limitations upon the right of appropriating the products of the open sea do not exist in international law, but depend either upon the municipal laws of each state operating upon its nationals and vessels engaged in such activity, or upon such treaties as set up a standard of duty for the signatories and their nationals. No state may exercise jurisdiction in time of peace over the open seas, except over its own vessels and nationals and over pirates *jure gentium;* therefore no rights of exclusive territorial maritime jurisdiction analogous to that over the maritime belt can be acquired either by prescription or otherwise. An exception apparent rather than real exists in the case of the pearl-fisheries of Ceylon and the Persian Gulf, long protected by Great Britain without international protest. These fisheries, found in shallow waters, are really appurtenant to the land though partly beyond the three-mile-limit.

A state by its own regulations may police the high-sea fisheries but only as to its own nationals and vessels. States by treaty may regulate fisheries beyond their maritime territorial limits, but such engagements are not binding upon states other than the signatories. Great Britain, Belgium, Denmark, France, Germany, and the Netherlands signed a convention at the Hague in 1882, for the policing of the North Sea fisheries. This convention, which set out with minuteness the limits of the ocean within which it was to be effective, provided a code for the regulation of vessels of the signatories engaged in these fisheries, including the time and manner of fishing, interference by one vessel with another, and giving force to such provisions by conceding a mutual right of visitation, search, and arrest to the public vessels of the signatories. Norway was not a signatory, claiming greater jurisdiction over its marginal seas than three miles, as recognized by the treaty. The same powers signed (France not ratifying) the Hague convention of 1887 for the regulation of the liquor-traffic in the North Sea. The system of police regulations set up for the North Sea was adopted for the open sea fisheries outside the territorial waters of Iceland and the Faroë Islands by the convention of London, 1901, between Great Britain and Denmark.

A few states, *e. g.*, Spain and Norway, still assert jurisdiction beyond three miles for all purposes including fishing, but not without challenge by other states. Furthermore jurisdiction has been asserted over portions of the sea formerly freely used as parts of the open sea. These extensions of jurisdiction have not infrequently been for the purpose of protecting the shore-fisheries. Russia has attempted to extend her authority over the White Sea by the introduction of a twelve-mile-limit, and Canada has enacted fishing-regulations for Hudson Bay. The effect would be to make these waters closed seas. In 1910, Russia seized the British trawler *Onward Ho!* for fishing in the White Sea between three and twelve miles from the shore. Although vessel and crew were released, Russia did not abandon her claim. The seizure of a Norwegian vessel in Moray Firth some five miles from the shore for violation of Scottish fishing regulation was upheld by the High Court of Scotland in 1906 (Mortensen *vs.* Peters, *Am. Jour. Int. Law,* I, 526). The decline of shore fisheries points to more careful and extensive regulation, not in the interest of state expropriation, but for the conservation of its resources. Conditions under which fisheries flourish do not end at the point of three miles from shore. Extensions of this limit, therefore, for the conservation of the resources of the territorial seas are reasonable, though hardly to the degree attempted by the United States for the protection of the seals when she declared Bering Sea to be a closed sea. Such extensions to be valid must be acknowledged by treaty, if not acquiesced in by other states as in the case of certain bays.

See BAYS AND GULFS; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; COMITY, INTERNATIONAL AND INTERSTATE; HAGUE TRIBUNAL; HALIFAX COMMISSION AND AWARD; HIGH SEAS; MARE CLAUSUM; NEWFOUNDLAND FISHERIES DISPUTE; SEAL FISHERIES; TERRITORY IN INTERNATIONAL LAW; THREE-MILE LIMIT.

References: Grotius, *De jure Belli ac Pacis* (1625), II, c. 3, §§ 7–15; Vattel, *Droit des Gens* (1758), I, ch. xxiii; L. Oppenheim, *Int. Law* (1905), I, 333–338; J. B. Moore, *Digest of Int. Law* (1906), I, 716–722; C. de Martens, *Causes Célèbres du Droit des Gens* (2d ed., 1858), I, 267–298; B. Castel, *Du Principe de la Liberte des Mers* (1900); D. R. Chipeliades, *De la Liberté de la pleine Mer* (1887); J. Imbart-Latour, *De la Pêche* (1885); C. David, *La Pêche Maritime au point de vue international* (1897); G. F. DeMartens, *Récueil Général de Traités* (1808), IX, 505–563, XXII, 562, XXXIII, 268–276; F. Lopez y Medina, *Coleccion de Tratados Internacionales, Ordinanzes y Reglamentos de Pesca* (1906); R. Waultrin "La Mer Blanche, est-elle une mer libre?" in *Révue de Droit Int. Pub.,* XVIII (1911), 94–99; T. W. Balch, "Is Hudson's Bay an Open or a Closed Sea?" in *Am. Jour. Int. Law,* VI (Apr., 1912), 409–460; T. W. Fulton, *Sovereignty of the Sea* (1911).

J. S. REEVES.

FISHERIES, RELATIONS OF GOVERNMENT TO

Federal Jurisdiction.—The Tenth Amendment to the Constitution, which reserves to the states the powers not delegated to the United States, applies with full force to the fisheries. The Federal Government exercises no direct jurisdiction over the littoral and interior fisheries except in Alaska; and legislation affecting the high-sea fisheries has usually involved primarily navigation and the customs. In many interstate and international boundary waters the fisheries have declined owing to failure of the states to enact adequate and uniform legislation.

Jurisdiction over such waters for the purpose of regulating the fisheries was assumed by the United States for the first time in a treaty concluded with Great Britain on April 11, 1908, applicable to the entire northern boundary of the United States. A system of uniform and common international regulations for the protection and preservation of the food fishes in the boundary waters of the United States and Canada was prepared by an international fisheries commission provided for in the treaty; but the legislation necessary to give effect to the treaty has not been enacted up to the year 1914.

For regulating fisheries on the high seas, the Government has, from time to time, enacted special laws to meet particular conditions. A noteworthy case was that of the spring mackerel fishery, which was practically prohibited by an act of February 28, 1887, for a period of five years (1888-1892), ostensibly for the protection of mackerel during the spawning season. It was aimed at the vessel fishery conducted with seines and nets, and exempted boats using lines and also traps operated from the shore; it contained no direct interdiction against fishing but prohibited the landing anywhere in the United States of mackerel caught in the manner specified before the first day of June. A similar statute of June 20, 1906, to regulate the sponge fishery and preserve the sponge grounds off the coast of Florida, prohibited the landing, cure, or sale at any place in the United States of any sponges less than 4 inches in diameter and of sponges taken by means of diving or diving apparatus, excepting in water more than 50 feet deep and between October first and May first of each year. The assumption of direct control over fishing operations outside the territorial jurisdiction is seen in the act of December 29, 1897, prohibiting, under heavy penalties, the hunting or killing of fur seals by citizens or vessels of the United States in the north Pacific Ocean north of the thirty-fifth degree of north latitude and in Bering and Okhotsk seas.

Alaska.—In this territory, whose fisheries are the most valuable in the country, the industry is entirely under Government control. Protective and administrative laws passed by Congress are enforced by the Department of Commerce (through the Bureau of Fisheries); and these are supplemented by regulations issued under authority of law by the Secretary of Commerce. The Alaska fisheries are flourishing, and under existing conditions of administration the fishery resources may be expected to remain unimpaired for an indefinite period. The restrictive measures (act of June 26, 1906), applying largely to salmon, comprise: (1) a weekly close time from 6 P. M. Saturday to 6 A. M. on Monday in all waters except Cook Inlet, Copper River delta, Bering Sea, and the tributaries thereof; (2) a daily close time from 6 P. M. to 6 A. M. in all salmon streams less than 100 yards wide; (3) prohibition of any barricade, obstruction, or fixed apparatus at any point in a stream where it is less than 500 feet wide, or within 500 yards of any red-salmon stream that is less than 500 feet wide at its mouth; (4) prohibition of the laying of seines or nets for a distance greater than one-third the width of any water course, or within 100 yards of any red-salmon stream whose mouth is less than 500 feet wide or within 100 yards of any other seine or net, and the placing of fixed apparatus within 600 yards laterally or 100 yards endwise of any other fixed contrivance; (5) authority to close to all commercial fishing for one year or longer any stream which, in the opinion of the Secretary of Commerce, it is desirable to convert into a spawning preserve.

A peculiar feature of the law is the levying of license taxes on preserved fish, fish oil, and fish fertilizer; and the exemption, from such taxes on canned salmon, of persons who operate private hatcheries, at the rate of 10 cases of canned salmon per 1,000 red or king salmon fry planted. The Federal Government aids in the maintenance of the salmon supply by the operation of hatcheries on an extensive scale. Aliens are prohibited from engaging independently in fisheries of Alaska but may be employed by citizens of the United States (act of June 14, 1906).

The killing of fur seals under Government auspices on the Pribilof Islands is confined to males over one year old (act of April 21, 1910), and departmental regulation restricts the killing to those 2 and 3 years old; the killing or hunting of sea otters anywhere in territorial waters of Alaska is prohibited for a period of 20 years from 1910, under authority conferred by same act. The protection of all

other fur-bearing aquatic and land animals in Alaska is under the Department of Commerce. By the act of August 24, 1912, the killing of surplus male seals on land is suspended for a period of five years (1913–1917), except such as are required for use of the native inhabitants of the seal islands.

Bounties and Allowances to Fishermen.—For the encouragement of the fisheries Congress has from time to time granted various kinds of bounties, allowances, drawbacks, etc., to fishermen and fishing vessels. In 1789 an act was passed giving a cash bounty on salted fish exported, in lieu of a drawback on the duties imposed on the foreign salt used in preserving said fish. In 1792 the bounty paid in lieu of a rebate on salt duties was superseded by a direct bounty, effective for seven years, for vessels engaged in the cod fisheries, contingent on the active employment of such vessels for at least four months during the season (last day of February to last day of November); the bounty was at the rate of $1 a ton for vessels under 20 tons burden, $1.50 a ton for vessels of 20 tons or more but less than 30 tons, and $2.50 a ton for vessels of 30 tons and over, the maximum payment to one vessel in one season being $170; in 1797 the foregoing rates were increased 33-1/3 per cent. In 1813 an act was passed granting a bounty of 20 cents a barrel on all pickled fish exported that had been cured with foreign salt, and giving an increased bounty to fishing vessels, the rate being $4 a ton for vessels of over 30 tons burden. In 1819 the rates were still further increased, all vessels of 30 tons or less being entitled to bounty at $3.50 per ton, and all larger vessels at $4 per ton, the maximum for one season being $360. From that time until 1866 there was no change, but in that year all fishing bounties were repealed; duties were remitted, however, on salt used by fishing vessels (*R. S.*, § 3,022). In 1897 an act (*Stat. at Large*, ch. xi, § 284) was passed remitting duties on salt used in preserving fish on vessels or on the shores of navigable waters; this provision is still in force (1913).

Fisheries as Related to Navigation.—Vessels engaged in various branches of the fisheries, while coming under the general navigation laws in matters not directly pertinent to fishing, are subject to special regulation or exemption.

Fishing vessels and boats of the United States are governed by article 9 of the international rules of 1897, regarding lights, signals, etc., for the prevention of collisions at sea (act of Jan. 19, 1907), and by article 9 of the inland rules of 1897 (act of June 7, 1897) for the prevention of collisions in harbors, rivers, and inland waters. By these regulations (Art. 26), fishing vessels in operation are given right of way, but must not obstruct a fair-way used by vessels other than fishing.

Any vessel of the United States, when properly licensed, may engage in the fisheries and be entitled to all the privileges enjoyed by fishing vessels generally (*R. S.*, 4,311). A fishing license, issued by collectors of customs for a period of one year, specifies the fishery in which the vessel to which it is issued is to engage (*R. S.*, 4,321).

Before starting on a voyage, the master of every vessel engaged in bank and other cod fisheries or in mackerel fishery must make an agreement, for one voyage or for fishing season, with every fisherman member of the crew, covering the matters of share of proceeds, proper performance of duty, etc. (*R. S.* 4,391, 4,392, 4,393, 4,394).

Steam vessels engaged in oyster dredging and planting or in fishing for food fishes in the Great Lakes and other inland waters, and not carrying passengers, are exempted from the provision of law prohibiting the taking of persons not members of their crew, and may be authorized and licensed by the district supervising inspector of steam vessels to carry such additional persons as may be necessary for conducting the oyster or fishing business, not exceeding one such person for every net ton of measurement (act of July 9, 1886).

A vessel licensed for carrying on the fisheries may also touch and trade in foreign ports if the owner or master shall, before departure, obtain permission from the local collector of the port (*R. S.* 4,364). This right was contested by the British Government, but was affirmed in the North Atlantic Coast Fisheries Arbitration at The Hague in 1910 (*see* NEWFOUNDLAND FISHERIES DISPUTE), the court holding that American fishing vessels, if duly authorized by their Government, have this right under treaty, provided the exercise of the liberty of fishing and the privilege of trading is not concurrent.

Protective and Restrictive State Legislation.—The relations of the states to fisheries are set forth in an enormous volume of legislation, much of which is rather unstable. The major heads under which such legislation falls are: (1) powers and duties of officials who enforce the fishery laws; (2) protection of aquatic animals; (3) maintenance and increase of fish, shellfish, etc., by artificial means; (4) raising of revenue by taxing vessels, boats, and apparatus, by licensing occupations, and by selling or renting waters or bottoms for cultural purposes.

The great bulk of fishery legislation pertains to the protection and preservation of water creatures, the means and methods invoked to this end come for the most part under the following captions: (1) Season: a close time is frequently imposed during the spawning period or when animals are in poor condition; it may cover a continuous period of weeks or months (white-fish in Great Lakes) or be for one day or several days in each week (salmon in Pacific streams); serious depletion of a species may be met by absolute suspension of

fishing for a term of years. (2) Methods: interdictions may close certain waters to commercial fishing, may apply to the use of nets in particular streams or special fisheries, may keep streams from being barricaded by fixed or movable appliances, and may save fish from destruction by dynamiting and poisoning. (3) Apparatus: this is regulated as to size, size of mesh, distance from shore and from other apparatus, locality where set, etc. (4) Condition and size of fish, etc.: the protection of egg-bearing lobsters is general, but is waived in some states if eggs are saved for hatching purposes. A size limit on fish taken for sale is enforced in numerous states and with regard to many species, and applies also to lobsters, terrapin, and other animals.

The inability of states to enact uniform laws for interstate waters and to treat with foreign nations in the case of international waters, has led some of them, through appropriate legislative action, to signify their willingness to have Congress assume jurisdiction in such waters; and there is now a concerted movement to secure federal control over migratory fishes.

Obstructions, Pollutions, etc.—Congress, so far as its jurisdiction goes, prevents injury by obstructions that affect the free movements of fish in streams. By act of August 11, 1888, the Secretary of War was authorized to construct fishways in streams where river and harbor improvements interfere with passage of fish. The act of June 21, 1906, as amended by act of June 23, 1910, relating to construction of dams in navigable streams, makes a direct reservation in interests of migratory fishes, by requiring the owner of each dam to install and maintain therein a fishway approved by the Secretary of Commerce. For non-navigable streams, many of the states require that dams or other obstructions shall contain fishways.

Damage to fish by the pollution of waters is provided against in nearly every state. The discharge of sawdust, acids, dyestuffs, gas tar, and other deleterious substances is prohibited or regulated. The use of dynamite and poisons for killing fish is illegal in most states.

Aquiculture, National and State.—Artificial propagation of fish and other aquatic animals is extensively conducted by both Federal and state governments, and is recognized as of great importance in maintaining and increasing the supply. At numerous hatcheries established by acts of Congress or of state legislatures valuable food and game species are propagated, and the young are furnished free for stocking public and private waters. The Federal Government imposes no restrictions on this work, but some states require that waters thus stocked shall be open to the public. To minimize the danger from indiscriminate planting, some states prohibit introduction of non-indigenous fishes without special permit. The national and state authorities coöperate in fish culture, and in some sections conduct joint operations.

See Alaska Boundary Controversy; Bays and Gulfs, Jurisdiction over; British North America, Diplomatic Relations with; Fish Commissions; Headlands Theory; High Seas; Lakes, Jurisdiction and Navigation of; Newfoundland Fisheries Dispute; Ports, Jurisdiction in; Reciprocity Policy; Seal Fisheries; Three-Mile Limit; Vessels.

Hugh M. Smith.

FISHERIES, STATE EXECUTIVE DEPARTMENTS OF. A fishery and game department, on a small scale, is a part of the state executive in a few states. By common law the state has jurisdiction over wild game and fish—if it chooses to assert it. In the colonial charters, provision was often made regarding fishing rights. The state legislatures have passed many acts relating to fish and game which are usually administered by game wardens. Statutes or executive orders regulate the manner of fishing, the time for fishing, and the length or size of fish that may be taken. In Ohio the possession of nets and seines of above certain dimensions, constitutes an offense. So numerous, minute and searching are the game and fish laws that in some states it is difficult to hunt or fish at all. The state activity includes fish hatching at public expense; stocking of waters; inspection and suspension of fishing laws; licensing fishermen and so on. See Fish Commissions; Fisheries, Relation of Government to; Game Laws. **References:** J. H. Finley and J. F. Sanderson, *Am. Executive* (1908), ch. xxii; game laws of the states; F. J. Stimson, *Federal and State Constitutions* (1909), Bk. III, 417; N. Y. State Library, *Index of Legislation* (annual).

T. N. Hoover.

FIVE-MINUTE RULE. The five minute rule (Rule XXIII, ¶ 5, first adopted in 1847, and modified in 1850) is one of the rules of Congress, governing debate in committees of the whole house. It provides that when general debate is closed by order of the house, any member shall be allowed five minutes to explain any amendment he may offer, after which the member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it. Under this rule in practice *pro forma* amendments are offered as a pretext for five minute speeches, and then by unanimous consent (rarely refused) withdrawn, thus in effect prolonging the debate. See Rules of Congress.

A. N. H.

FLAG OF THE UNITED STATES. Origin.—As prescribed by law this ensign consists of a white star for each of the states in a blue union, called the jack when hoisted by itself, with a fly of 7 red and 6 white horizontal stripes commemorating the original 13 states.

The colors and their distribution in union and fly suggest derivation from the flag of Great Britain; and there is no historic evidence of any other original. The Washington coat-of-arms bears stars and stripes but in a different arrangement. No national flag was adopted by the Continental Congress in 1775, when some vessels cruised against British shipping under British colors; but the batteries around Boston hoisted the pine-tree flag long known in Massachusetts. In the South the rattle-snake was used as an emblem; and various mottoes added to the confusion of color and pattern. January 2, 1776, the Union flag, bearing the combined crosses of Great Britain and a striped field, was hoisted in Washington's camp at Cambridge; and this copy of the familiar ensign of the British East India Company was used in the squadron of Commodore Hopkins during that winter's cruise. No change was made that year; but June 14, 1777, Congress approved a design showing 13 stars in the union and the same number of stripes.

Accepted Form.—The attempt to add both stars and stripes when new states were admitted spoiled the proportions of the flag; and April 4, 1818, the change was limited to the stars of the union, the number of stripes being limited to 13 by statute. The first flag of this pattern had 20 stars "so disposed as to form one great star;" but the Navy commissioners secured the approval of President Monroe for their arrangement in horizontal rows, the union to be one-third the length and seven-thirteenths the depth of the flag; and the total length not quite twice as long as the depth or hoist—19 feet by 36 being the dimensions for the largest naval ensign. The present flag (1914) contains 48 stars arranged in six parallel rows.

Confederate States of America.—The southern Confederacy had an arrangement of stars and bars which was criticized as a parody of the flag of the United States. In 1863 a star-spangled blue cross in a red union was made the Confederate battle-flag; and the addition of a white field completed the ensign. A later design made the outer part of the fly red.

Legal Regulations.—Salutes are rendered when the flag is hoisted at 8 A. M. or lowered at sunset both in the Army and Navy. No trade-mark bearing a national or state flag can be legally registered in the United States and some of the states have statutes forbidding the use of the flag for advertising purposes. In some states every schoolhouse must have and display the flag.

See ARMY, STANDING; COMMANDER IN CHIEF; MILITARY DISCIPLINE; OFFICERS, MILITARY AND NAVAL; WAR, CARRYING ON.

References: G. H. Preble, *Flag of the U. S.* (1880), 204, 218, 259, 348, 527, 531; P. D. Harrison, *Stars and Stripes* (1906), 71–76; U. S. Navy Department, *Flags of Maritime Nations* (1899); U. S. War Department, *Stars and Stripes* (1909); *Official Records* (1880–1901), Atlas No. 35; *U. S. Revised Statutes* (1901), §§ 1791, 1792, *ibid* (1910), § 1010.

C. G. CALKINS.

FLETCHER vs. PECK. Action was brought by Fletcher against Peck in the federal circuit court for Massachusetts to recover damages for breach of warranty of title in a conveyance to Peck's remote grantors of a large tract of land included within a grant by the state of Georgia of lands bounded on the west by the Mississippi River which were claimed by the state under a colonial grant from the Crown (1810; 6 *Cranch* 87). The title of the state was questioned on the ground that the Indian title had not been extinguished; and it was also contended for plaintiff that the state grant had subsequently been rescinded by statute. On writ of error from a decision in favor of Peck it was held that the Indians did not have title but only a possessory right, the extinguishment of which left a perfect title under the colonial grant. The important constitutional questions decided were that the legislative grant constituted a contract protected by the Federal Constitution against state impairment; and that the constitutional provision applied to contracts of the state as well as to those between individuals. **See** CONTRACT, IMPAIRMENT OF.

E. MCC.

FLOATERS. Electors with doubtful principles and purchasable votes, especially prevalent in the "pivotal" states in presidential campaigns previous to the Australian ballot reform. **See** CORRUPTION, POLITICAL; PARTY SYSTEM IN DOUBTFUL STATES.

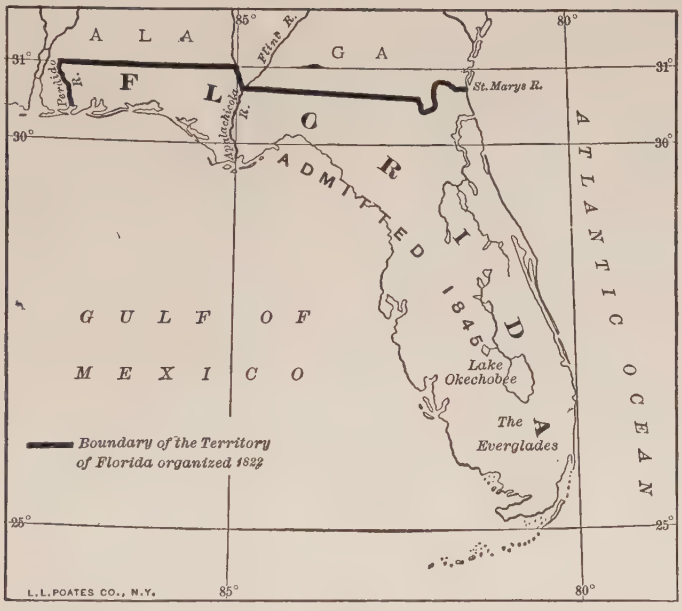
O. C. H.

FLORIDA

Early History.—The southeastern peninsula of North America was discovered March 27, 1513, by Juan Ponce de Leon who gave to it the name Florida. The Indians were hostile and early attempts to subjugate the country were abandoned. The first Spaniards planted no permanent colonies, bringing only gentlemen and soldiers intent on conquest and the pursuit of wealth while the settlements suffered from starvation and the attacks of savages. Alternately pillaged by bands of French and English, the history of Florida for a hundred years relates largely to the efforts of Spanish missionaries to christianize the Indians. A colonial governor with power enforced by troops represented the absolute authority of the Spanish

King. French settlements limited Florida on the west at the Perdido River while on the north Spanish claims conflicted with English colonial grants. Boundary disputes, Indian troubles and fugitive slaves engendered constant strife between the English colonists of Georgia and the Spanish of Florida. By the treaty of 1763 Spain ceded Florida to England, and France transferred to that country most of her possessions west of the Perdido (*see* LOUISIANA ANNEXATION). Under Spain there had been neither industrial nor agricultural development, and the province contained but 6,000 civilized inhabitants. England divided the province into East (*see* EAST FLORIDA) and West Florida (*see*), offered liberal inducements

Annexation; Territory.—In 1821 negotiations for the purchase of Florida were concluded and the province was formally transferred to the United States. An act of March 3, 1822, replaced the military authority by civil government and united East and West Florida. But the powers of self-government were limited. The governor, appointed by the President, was assisted by a council of thirteen, appointed annually. The legislative council regulated county and municipal government. The governor annually reported its enactments to Congress which could annul them. All territorial officials, including the delegate to Congress, were appointed by the President. Gradual amendments gave the people a larger share



BOUNDARIES OF THE STATE OF FLORIDA

to colonists and developed a prosperous foreign trade. Authority was vested in a colonial governor aided by a council and representative assembly. During the American Revolution loyal Florida became a refuge for fugitive loyalists and a basis for military operations against the revolting colonies. By the treaty of 1783 England restored Florida to Spain. The United States shortly undertook to secure possession of Florida, but Spain, though unable to maintain order, refused to sell. During the War of 1812 the English practically seized the province. In 1811 the settlers on the St. Mary's River and the Georgia frontiersmen, by the connivance of the American authorities, declared the establishment of the "Republic of Florida" and captured Fernandina and Amelia Island. Though the act was officially disavowed by the United States, Florida remained virtually a conquered province until the withdrawal of the American troops in 1813.

of power. In 1826 they were authorized to elect the council, though the governor retained the veto power, subject to annulment by a two-thirds vote. In 1834 the council was enlarged to 26 members and later the delegate to Congress was elected.

Early State Government.—Immigration from the southern states and the establishment of a firm government inaugurated a period of increasing prosperity hampered only by frequent raids of the Seminole Indians. They were removed from the territory only after a bitter war. March 3, 1845, Florida was admitted to the Union with the Perdido River as the western boundary. With the admission to statehood the provisional constitution of 1839 became effective. The franchise was restricted to free white males, over 21 years of age, citizens of the United States, residents of Florida for two years and enrolled in the state militia. The state executive officials were

elected by the legislature. In 1845 the state repudiated $3,900,000 of the debt of various banks which had been guaranteed by the territory. At the first election held in that year the Democrats elected the governor and both United States Senators.

Civil War and Reconstruction.—Florida took a prominent part in the events preceding the Civil War. January 10, 1861, she declared her independence, January 21 her Senators withdrew from the United States Senate and February 17, 1861, she became one of the Confederate states. May 17, 1865, the Confederate troops in Florida surrendered and May 20 all slaves in the state were freed. The close of the war found the state impoverished and the treasury emptied; even the principal of the school fund, established in 1845, had been expended and a heavy war debt remained. The state convention, October 25, 1865, annulled the ordinance of session, declared slavery abolished and repudiated the state debt contracted between January 10, 1861, and October 25, 1865. A constitution, framed by a convention composed largely of negroes, was ratified by popular election in May, 1868. The state legislature convened June 1, 1868, ratified the Thirteenth and Fourteenth Amendments to the Federal Constitution and secured the readmission of Florida into the Union despite the veto of President Johnson. July 4, 1868, the government was transferred to the civil authorities and the newly elected state officials assumed their duties. The extravagance of the "carpet-bag" government rapidly increased the indebtedness of the state until in 1871 it reached $1,500,000. The failure of the railroads to pay interest on bonds guaranteed by the state added to the financial burden. Not until 1873 did the revenues of the state equal the annual interest on the debt and the current expenses of government. In the Hayes-Tilden election contest of 1876 the electoral vote of the state was disputed. The "visiting statesmen" went to Florida and the electoral commission finally awarded its vote to Hayes.

Present Constitution.—The state is governed under the constitution adopted in 1885. It has the pure Australian ballot with non-partisan tickets, thus controlling the negro vote, though that problem is not considered acute. The constitution establishes county local option. The governor is elected for a term of four years and can not serve two successive terms. The legislature meets biennially, the lower house being elected every two years. The senate consists of 32 members, one-half being elected every two years and holding office for four years. The supreme court consists of six judges serving six years, one-third being elected every two years. The chief justice is selected every second year by lot. The state is divided into eleven judicial circuits with judges appointed by the governor for six years and state's attorneys appointed for four years. The minor courts include criminal courts of record, county courts, county judges courts and justices of the peace, all of limited jurisdiction. In all civil cases and in criminal cases, other than capital offenses where twelve men are required, six men constitute the jury. The cities are governed by a mayor and elective council, while at the head of each county is a board of five commissioners exercising general jurisdiction over county affairs. Since 1879 the state has been overwhelmingly Democratic. In state elections the Democratic majority averages 30,000 and, except in presidential campaigns, when a full state and congressional Republican ticket is named, no opposing ticket is customarily nominated. In 1850 the population was 87,445; in 1910, 752,619.

See EAST FLORIDA; FLORIDA ANNEXATION; WEST FLORIDA.

References: G. R. Fairbanks, *Hist. of Florida* (1871); H. B. Fuller, *Purchase of Florida* (1906); E. L. Green, *Hist. of Florida* (1898); F. N. Thorpe, *Fed. and State Constitutions* (1909). HUBERT BRUCE FULLER.

FLORIDA ANNEXATION. West Florida, and East Florida.—Eight years after Spain, by the treaty of 1795, agreed to restrict the northern boundary of West Florida, Jefferson claimed that province as part of Louisiana—a claim later maintained by various legislative and executive acts and accepted by the Supreme Court. Negotiations for the remainder of Florida began in 1803 but failed. In 1808 diplomatic relations with Spain were suspended. Madison, after the occupation of West Florida in 1810, regarding the remaining territory as possible indemnity for claims, obtained legislative authority to take temporary possession east of the Perdido by arrangements with the local authorities; or, if necessary in an emergency, to prevent foreign occupation, subject to future negotiations. In 1812 the Secretary of War authorized the seizure of Pensacola which, after its later occupation by Jackson to drive the British out (1814), was delivered to the Spanish authorities.

Negotiations and Treaty of Cession.—Diplomatic relations with Spain were resumed in 1815. In subsequent negotiations, conducted alternately at Madrid and Washington, the Spanish proposal to cede all Spanish territory east of the Mississippi in exchange for all American territory west of it was twice declined. In March, 1818, Monroe declared that failure of Spanish treaty obligations would justify American military occupation of Florida in self-defense, and a month later Jackson crossed the border on a raid closing with the seizure of Pensacola.

Spain was finally induced to sell what she could not defend. Through the mediation of De Neuville, a compromise was effected to which both Adams and Onis finally agreed, resulting in the treaty (February 22, 1819)

giving clear title to all the Floridas (59,268 square miles) in return for the payment of claims of American citizens against Spain ($5,000,000) and relinquishment of all claim to Texas. The treaty was unanimously ratified (February 24, 1819) by the Senate. Congress, expecting early ratification by Spain, authorized the President (March 3) to take possession and to establish temporary local government.

Ratification.—Although Forsyth was sent to Madrid to hasten ratification, the Spanish Government delayed action leaving the status of Florida equivocal. The tardy announcement of contemplated repudiation caused the American Government to consider seriously the question of occupation. Although Vives arrived from Madrid to propose conditions Monroe still advised forbearance (May 9, 1820).

The treaty was finally ratified by the Spanish Cortes, October 1820; and was re-ratified by the Senate, February 1821, with but four dissenting votes.

Occupation.—Under acts of March 1821, Monroe appointed Andrew Jackson military governor, with the powers and duties previously exercised by the Spanish governor. The formal act of cession was performed at St. Augustine (July 10) and at Pensacola (July 17, 1821). Spanish laws remained in force until by act of March 30, 1822, Congress established a civil government.

See FLORIDA; FRANCE, DIPLOMATIC RELATIONS WITH; SPAIN, DIPLOMATIC RELATIONS WITH.

References: J. Q. Adams, *Memoirs* (1877), IV, V, *passim;* K. C. Babcock, *Rise of Am. Nationality* (1906), ch. xvii; J. M. Callahan, *Cuba and Int. Relations* (1899), ch. iv; E. J. Carpenter, *Am. Advance* (1903), ch. iii; F. E. Chadwick, *U. S. and Spain* (1909), chs. iv–vii; Edward Channing, *Jeffersonian System* (1906), ch. xi; J. W. Foster, *Century of Am. Dipl.* (1906), 256–65; J. B. Moore, *Int. Arbitrations* (1898), V, 4495–4500, 4519, 4525, *Digest of Int. Law* (1906), I, 439–45; J. T. Morse, *J. Q. Adams* (1897), 109–127. J. M. CALLAHAN.

FOLK, JOSEPH W. Joseph W. Folk (1869–——), a native of Tennessee, was admitted to the bar in Missouri in 1890 and soon thereafter became active as a Democrat in the politics of his adopted state. His most notable services were rendered in the capacity of circuit attorney and consisted in the deliverance of the city of St. Louis from conditions of corruption rarely paralleled in American municipal history. Venality in the legislature was likewise exposed and relentlessly punished. In recognition of his fearless and nonpartisan warfare upon corruption, Folk was nominated in 1904 for the governorship; and, upon a personal platform declaring for honesty in politics and the public service, he was elected by the votes not only of Democrats but of many Republicans. He occupied with honor the gubernatorial office until 1909. In 1913 he was appointed solicitor for the Department of State. See DEMOCRATIC PARTY; EXECUTIVE AND EXECUTIVE REFORM; GOVERNOR. **References:** P. L. Allen, *America's Awakening* (1906), ch. vi; W. A. White, Joseph W. Folk in *McClure's Magazine,* XXVI, Dec., 1905, 115–132.

FOOD. Governments in the United States concern themselves extensively with food legislation. Some grains, particularly wheat, oats, rye, barley and Indian corn, are subject to Government inspection (*see* INSPECTION AS A FUNCTION OF GOVERNMENT), to determine their grades; and the warehouses in which they are stored are subject to public regulation. Abattoirs (*see*) and bake shops are commonly regulated by state law and often by city ordinance. The most important public regulations as to food come under the head of pure food (*see*). Both national and state statutes provide for wholesome conditions in the preparation of animals for food, and of food products of all kinds; prohibit adulteration of food even with harmless substances; and in some cases require a statement on the labels of the ingredients of the compounds. Most cities, by ordinance, regulate the retailing of food products, particularly the perishable ones; and some of them provide markets (*see*) for the cheap and ready exchange of foods between the growers and the consumers. See DRUGS, PUBLIC REGULATION OF; HEALTH, PUBLIC, REGULATION OF; MILK SUPPLY, REGULATION OF; PURE FOOD. A. B. H.

FOOTE'S RESOLUTION. A resolution introduced in the Senate December 29, 1829 by Senator Samuel A. Foote of Connecticut, proposing to check the indiscriminate sale of public lands. The debate on the resolution, having first taken the form of an attack by the western Senators upon those from the East for their alleged hostility to the interests of the western states, soon culminated in the epoch-making Webster-Hayne debate. See WEBSTER, DANIEL; HAYNE, ROBERT Y. O. C. H.

FORCE BILL. An appellation derisively applied to the following federal bills, whose purpose has been to enforce statutes obnoxious to certain sections of the country: (1) law of March 2, 1833, enforcing the collection of tariff duties (*see* BLOODY BILL); (2) law of May 31, 1870, enforcing the Fourteenth and Fifteenth Amendments; (3) bill which passed the House July 2, 1890, but failed to pass the Senate, providing for federal control of congressional elections. See DEMOCRATIC PARTY; ELECTIONS, FEDERAL CONTROL OF. O. C. H.

FOREIGN AND DOMESTIC COMMERCE, BUREAU OF. See COMMERCE, DEPARTMENT OF; MANUFACTURES, BUREAU OF.

FOREIGN ELEMENTS IN THE UNITED STATES

Percentage of Foreign Born.—Federal censuses distinguish between persons themselves born in foreign countries and native persons whose parents were born in foreign countries; these two classes together are referred to as the foreign elements in the population.

The foreign elements in the United States consist almost wholly of whites, Chinese, and Japanese. Of the negroes only a fraction of one per cent are foreign-born or had parents born abroad, and of the Indians less than 2 per cent. In 1910 nearly four-fifths of the Chinese and over nine-tenths of the Japanese were foreign-born, and most of the remainder had parents born abroad. For convenience, therefore, this discussion is restricted to the whites, Chinese, and Japanese, and the latter two races are referred to as one.

In 1910 the population of continental United States was made up as follows:

	Number	Per cent
Total	91,972,266	100.0
White		
Native, total	68,386,412	74.4
Native parentage	49,488,575	53.8
Foreign and mixed parentage	18,897,837	20.5
Foreign-born	13,345,545	14.5
Negro	9,827,763	10.7
Indian	265,683	0.3
Chinese	71,531	0.1
Japanese	72,157	0.1
Other Asiatics	3,175	

The foreign white stock thus constituted in 1910 35.1 per cent of the total population of the country. Of the total number of white inhabitants 16.3 per cent were born abroad and 23.1 per cent were natives with foreign-born parents. The following statement shows the principal elements of the population from 1850 to 1910. Parentage was not distinguished prior to 1870.

The first extensive immigration took place from 1840 to 1850. By the latter year, the first in which nativity was shown by the census, the foreign-born white were nearly one-tenth of the total population (9.7 per cent), and by 1860, 13 per cent. No very great change in this percentage appears since 1860, although there have been moderate fluctuations in accordance with waves of immigration. The proportion of native white of foreign parentage, although not shown prior to 1870, undoubtedly increased steadily from 1850 to 1900, but for 1910 the proportion was slightly smaller than in 1900.

By reason of restrictions imposed by federal law, the number of Chinese has decreased since 1880 (*see* CHINESE IMMIGRATION AND EXCLUSION). The Japanese, who were very few up to 1890, now slightly outnumber the Chinese.

Country of Birth.—The character of the foreign stock in the population of the United States has been rapidly changing during the past two decades. This change appears most conspicuously in the foreign-born element, as a longer time is required to permit its full effect upon the native element of foreign parentage to appear. Prior to 1890 the larger part of the immigration into the United States was from the countries of northwestern Europe or from Canada. At present persons from southern and eastern Europe far outnumber all others in the annual immigration.

In 1860 nine-tenths of the total foreign-born white population consisted of those born in the countries of northwestern Europe. The proportion fell till 1890, when it stood at 78 per cent, but by 1900 it dropped to 69 per cent, by 1910 to 51 per cent. The number of persons born in southern and eastern Europe increased from about 8 per cent of total foreign-born white population in 1890 to 18

POPULATION OF UNITED STATES BY RACE, NATIVITY, AND PARENTAGE (1850—1910)

	Number (Expressed in Thousands)						
	1910	1900	1890	1880	1870	1860	1850
Total population	91,972	75,995	62,948	50,156	38,558	31,443	23,192
Native white	68,385	56,595	45,979	36,843	28,096	22,826	17,313
Native parentage	49,489	40,949	34,476	28,568	22,771	------	------
Foreign and mixed parentage	18,898	15,646	11,504	8,275	5,324	------	------
Foreign-born white	13,346	10,214	9,122	6,560	5,494	4,097	2,241
Negro and Indian	10,093	9,071	7,737	6,647	4,906	4,486	3,639
Chinese and Japanese	[1] 147	114	110	106	63	35	[2]
	Per Cent of Total						
Total population	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Native white	74.4	74.5	73.0	73.5	72.9	72.6	74.6
Native parentage	53.8	53.9	54.8	57.0	59.1	------	------
Foreign and mixed parentage	20.5	20.6	18.3	16.5	13.8	------	------
Foreign-born white	14.5	13.4	14.5	13.1	14.2	13.0	9.7
Negro and Indian	11.0	11.9	12.3	13.3	12.7	14.3	15.7
Chinese and Japanese	0.2	0.2	0.2	0.2	0.2	0.1	------

[1] Includes 2,936 other Asiatics.
[2] Not reported, but insignificant.

per cent in 1900 and 38 per cent in 1910. In the latter year the foreign-born white population included about 6,740,000 persons born in northwestern Europe, 5,050,000 persons born in southern and eastern Europe, and 1,725,000 persons born on other continents, seven-tenths of the latter being born in Canada. Of the native whites of foreign or mixed parentage, those born in southern and eastern Europe increased 178 per cent. The most remarkable percentages of increase, although the absolute numbers are comparatively small, are those for persons born in the Balkan States and in Greece.

Age and Sex Distribution.—The age distribution of the foreign-born is very different from

FOREIGN-BORN WHITE POPULATION, BY PRINCIPAL COUNTRIES OF BIRTH (1910 and 1900)

Countries	Total		Per Cent Increase	Per Cent of Total Foreign-born White		Per Cent of Total Population
	1910	1900	1900–10 [1]	1910	1900	1910
Northwestern Europe	6,735,486	7,011,806	-3.9	50.5	68.6	7.3
England, Scotland, and Wales	1,219,968	1,166,863	4.6	9.1	11.4	1.3
Ireland	1,352,155	1,615,232	-16.3	10.1	15.8	1.5
Norway, Sweden, and Denmark	1,250,662	1,072,009	16.7	9.4	10.5	1.4
Holland and Belgium	169,450	124,677	35.9	1.3	1.2	0.2
Germany	2,501,181	2,813,413	-11.1	18.7	27.5	2.7
Switzerland	124,834	115,581	8.0	0.9	1.1	0.1
France	117,236	104,031	12.7	0.9	1.0	0.1
Southern and Eastern Europe	5,046,471	1,816,752	177.8	37.8	17.8	5.5
Russia and Finland	1,732,421	640,710	170.4	13.0	6.3	1.9
Italy	1,343,070	483,963	177.5	10.1	4.7	1.5
Austria-Hungary	1,670,524	636,968	162.3	12.5	6.2	1.8
Balkan States (Roumania, Bulgaria, Servia, and Montenegro)	87,371	[2]	------	0.7	------	0.1
Turkey in Europe	32,221	9,896 [4]	225.6	0.2	0.1	[5]
Greece	101,264	8,513	1,089.5	0.8	0.1	0.1
Spain and Portugal	79,600	36,702	116.9	0.6	0.4	0.1
Canada [3]	1,196,070	1,172,860	2.0	9.0	11.5	1.3
Mexico	219,802	101,908	115.7	1.6	1.0	0.2
Turkey in Asia	59,702	[4]	------	0.4	------	0.1
All other countries	88,014	110,491	-20.3	0.7	1.1	0.1

[1] A minus sign - denotes decrease.
[2] Data for 1900 not available; included with "all other countries."
[3] Includes Newfoundland for 1900.
[4] Turkey in Asia included with Turkey in Europe.
[5] Less than one-tenth of one per cent.

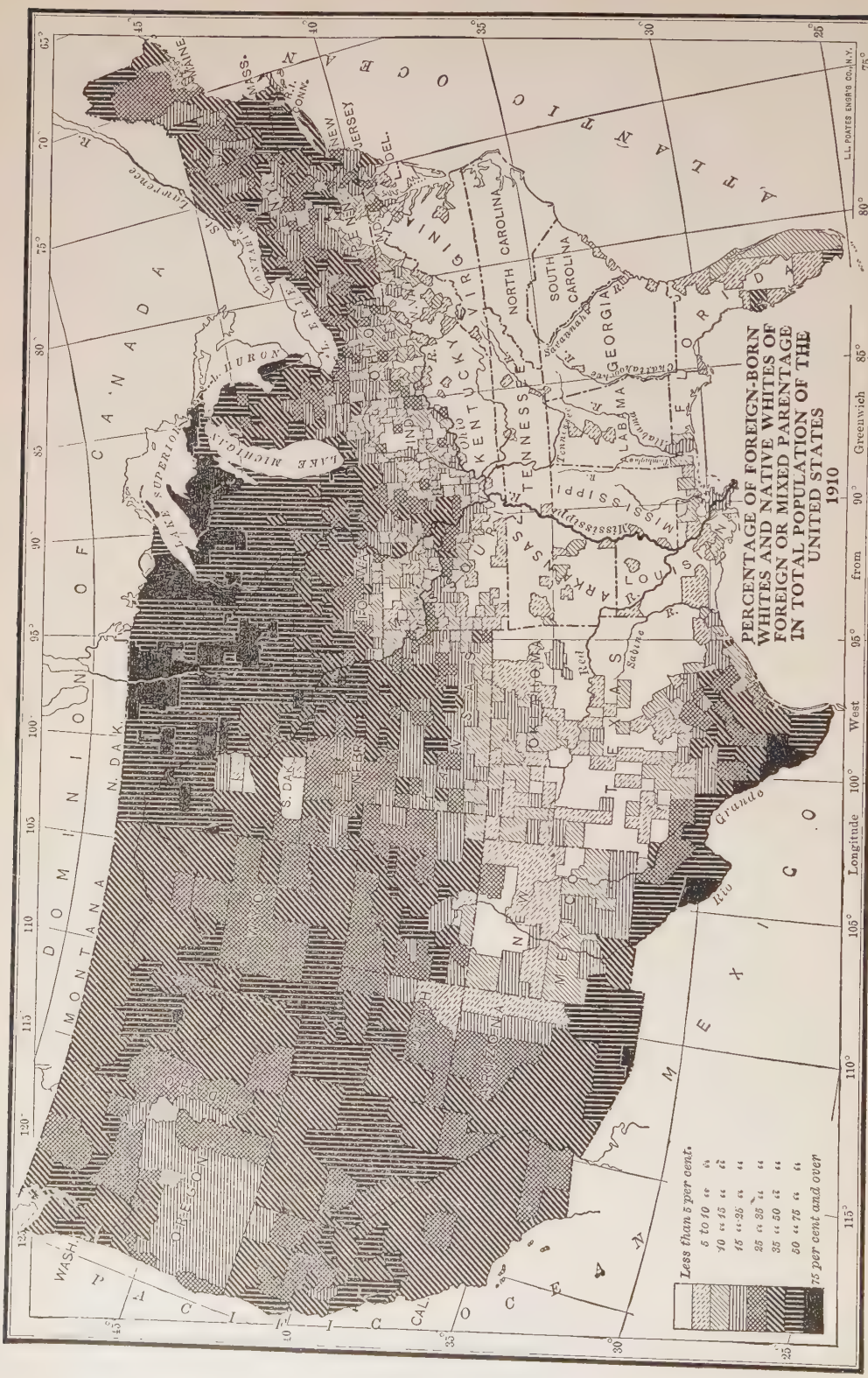
however, nearly seven-tenths still consist of those one or both of whose parents were born in northwestern Europe.

Persons born in Germany are still (1910) the most numerous, but have decreased materially since 1900. Next in number are those born in Russia and Finland, consisting largely of Jews and Poles. Then follows those born in Austria-Hungary, who are mostly of non-Teutonic races. Persons born in Ireland, who ranked second among the foreign-born elements in 1900, have fallen to the fourth place in 1910 and only slightly exceed those born in Italy. The Italians in this country are largely from southern Italy and Sicily.

The total number of whites born in the countries of northwestern Europe fell off about 4 per cent during the decade 1900–1910, while that of the natives, since adult immigrants far outnumber immigrant children, a large proportion of the children of the foreign-born being born in this country. Thus, in 1910, of the total foreign-born whites 94 per cent were 15 years or more of age; of the native whites of native parentage only 64 per cent. For this reason the foreign-born constitute a much larger proportion of the adult population than they do of the total population. On the other hand, for the same reason the proportion of adults among the native whites of foreign parentage is lower than among the native whites of native parentage.

The following table shows, for 1910, the distribution of the population 15 years of age and over, and also that of males of voting age (21 years and over):

	Persons 15 and Over		Males 21 and Over	
	Number	Per Cent	Number	Per Cent
Total	62,473,130	100.0	26,999,151	100.0
Native white	43,429,263	69.5	17,710,697	65.6
Native parentage	31,756,995	50.8	13,211,731	48.9
Foreign and mixed parentage	11,672,268	18.7	4,498,966	16.7
Foreign-born white	12,586,199	20.1	6,646,817	24.6
Negro	6,162,656	9.9	2,458,873	9.1
Indian, Chinese, Japanese, and all other	295,012	0.5	182,764	0.7


PERCENTAGE OF FOREIGN-BORN WHITES AND NATIVE WHITES OF FOREIGN OR MIXED PARENTAGE IN TOTAL POPULATION OF THE UNITED STATES 1910
Less than 5 per cent.
5 to 10 " "
10 " 15 " "
15 " 25 " "
25 " 35 " "
35 " 50 " "
50 " 75 " "
75 per cent and over
CANADA
ATLANTIC OCEAN
PACIFIC OCEAN
MEXICO
DOMINION OF
Longitude West from Greenwich
L.L. POATES ENGRG CO., N.Y.

POPULATION OF EACH GEOGRAPHIC DIVISION OF THE UNITED STATES BY RACE, NATIVITY, AND PARENTAGE, 1910, AND PER CENT OF TOTAL, 1910 AND 1900

Divisions	Number, 1910, expressed in thousands					Per cent of total									
	White			Negro	Indian, Chinese, Japanese, and All Other	White				Negro		Indian, Chinese, Japanese, and All Other	
	Native, Native Parentage	Native, For'gn and Mixed Parentage	For'gn-born			Native, Native Parentage		Native, Foreign and Mixed Parentage		Foreign-born					
						1910	1900	1910	1900	1910	1900	1910	1900	1910	1900
United States	49,489	18,898	13,346	9,828	413	53.8	53.9	20.5	20.6	14.5	13.4	10.7	11.6	0.4	0.5
New England	2,613	2,053	1,814	66	6	39.9	44.9	31.3	28.2	27.7	25.7	1.0	1.1	0.1	0.1
Middle Atlantic	8,463	5,591	4,826	418	18	43.8	47.9	28.9	28.5	25.0	21.4	2.2	2.1	0.1	0.1
East North Central	9,752	5,108	3,067	301	22	53.4	53.1	28.0	28.8	16.8	16.4	1.6	1.6	0.1	0.1
West North Central	6,524	3,215	1,613	243	44	56.1	54.7	27.6	27.8	13.9	14.8	2.1	2.3	0.4	0.4
South Atlantic	7,341	440	291	4,112	11	60.2	58.5	3.6	2.7	2.4	2.0	33.7	35.7	0.1	0.1
East South Central	5,452	215	87	2,653	3	64.8	62.6	2.6	3.0	1.0	1.2	31.5	33.1	(1)	(1)
West South Central	5,767	605	349	1,984	79	65.7	61.7	6.9	7.3	4.0	4.0	22.6	25.9	0.9	1.0
Mountain	1,467	617	437	21	92	55.7	51.1	23.4	26.1	16.6	17.2	0.8	0.9	3.5	4.5
Pacific	2,109	1,054	861	29	139	50.3	48.2	25.1	27.1	20.5	19.6	0.7	0.6	3.3	4.5

(1) Less than one-tenth of one per cent.

In 1910 the two elements of foreign white stock together constituted 38.8 per cent of the population 15 years of age and over, and 41.3 per cent of the males of voting age.

There is a large and increasing preponderance of males among the foreign-born population. In 1910 there were 7,523,788 foreign-born white males and 5,821,757 females, or 129.2 males to each 100 females, the proportion in 1900 having been 117.4. Among native whites of native parentage there were 104.0 males per 100 females, and among native whites of foreign and mixed parentage, 99.5. Among immigrants from southern and eastern Europe the proportion of males to females is much larger than among the earlier immigrants from northwestern Europe.

Tendency to Cities.—The foreign elements in the population are relatively much more numerous in urban than in rural districts, and the disparity is increasing. This is particularly true of the persons themselves born abroad. In 1910 there were about 9,640,000 foreign-born whites in urban communities (*i. e.*, places of 2,500 or more inhabitants), and only about 3,700,000 in rural communities; 72 per cent of the total were thus urban, as compared with 67 per cent in 1900 and 62 per cent in 1890. Of the total urban population of the country in 1910, 22.6 per cent consisted of foreign-born whites; of the rural population only 7.5 per cent. The recent immigrants from southern and eastern Europe have gone very largely to the cities. The proportion of native-born of foreign and mixed parentage in cities is also much larger than of native-born of native parentage; in 1910 nearly two-thirds of the former were urban, and only about 36 per cent of the latter. In the total urban population in 1910 the foreign-born whites plus the native whites of foreign and mixed parentage represented over one-half (51.6 per cent), while in the rural population these two elements constituted only about 21 per cent.

Geographic Distribution of the Foreign Elements.—As shown by the table opposite, the foreign elements in the population are very unequally distributed among the different sections of the country. The largest proportion is found in New England, where in 1910 nearly three-fifths (59 per cent) of the total population consisted of foreign-born whites and native whites of foreign and mixed parentage, 27.7 per cent being foreign-born. The middle Atlantic states rank next in this respect. Both of these divisions show a considerable increase in the percentage of foreign elements since 1900. Large proportions—ranging from 40 to 46 per cent of the total population—of the foreign white elements are also found in the two north central divisions and in the mountian and Pacific divisions. In these four divisions, however, the two foreign white elements combined constituted a smaller percentage of the total population in 1910 than in

PER CENT OF FOREIGN WHITE ELEMENTS IN EACH STATE, 1910

Division and State	Native White, Foreign and Mixed Parentage	Foreign-born White	Division and State	Native White, Foreign and Mixed Parentage	Foreign-born White
United States	20.5	14.5	Dist. of Columbia	13.6	7.4
			Virginia	1.8	1.3
New England	31.3	27.7	West Virginia	4.7	4.7
Maine	18.2	14.8	North Carolina	0.4	0.3
New Hampshire	23.9	22.4	South Carolina	0.7	0.4
Vermont	21.1	14.0	Georgia	1.0	0.6
Massachusetts	34.8	31.2	Florida	4.8	4.5
Rhode Island	35.9	32.8			
Connecticut	33.6	29.5	*East South Central*	2.6	1.0
			Kentucky	5.4	1.7
Middle Atlantic	28.9	25.0	Tennessee	1.8	0.8
New York	33.0	29.9	Alabama	1.5	0.9
New Jersey	30.7	25.9	Mississippi	1.1	0.5
Pennsylvania	23.6	18.8			
			West South Central	6.9	4.0
East North Central	28.0	16.8	Arkansas	2.3	1.1
Ohio	21.5	12.5	Louisiana	6.8	3.1
Indiana	13.0	5.9	Oklahoma	5.7	2.4
Illinois	30.6	21.3	Texas	9.3	6.2
Michigan	34.3	21.2			
Wisconsin	44.8	22.0	*Mountain*	23.4	16.6
			Montana	28.4	24.4
West North Central	27.6	13.9	Idaho	23.1	12.4
Minnesota	45.3	26.2	Wyoming	22.3	18.6
Iowa	28.4	12.3	Colorado	22.7	15.9
Missouri	15.7	7.0	New Mexico	8.0	6.9
North Dakota	43.5	27.1	Arizona	20.6	22.9
South Dakota	37.2	17.2	Utah	35.2	17.0
Nebraska	30.4	14.8	Nevada	25.6	22.0
Kansas	17.3	8.0			
			Pacific	25.1	20.5
South Atlantic	3.6	2.4	Washington	24.7	21.1
Delaware	12.8	8.6	Oregon	20.1	15.3
Maryland	14.8	8.0	California	26.7	21.8

1900. In the three southern divisions taken together the foreign white elements constitute less than 7 per cent of the population, and only in the west south central division do they exceed 10 per cent.

Nearly three-fourths of the total Japanese and Chinese population are found on the Pacific coast. These races constituted 2.5 per cent of the population of the Pacific division in 1910.

There are 13 states in which the two foreign white elements combined constituted more than half of the population, namely, in order of the proportion, Minnesota, 71.5 per cent; North Dakota, 70.6; Rhode Island, 68.7; Wisconsin, 66.8; Massachusetts, 66.0; Connecticut, 63.1; New York, 62.9; New Jersey, 56.6; Michigan, 55.5; South Dakota, 54.4; Montana, 52.8; Utah, 52.2; and Illinois, 51.9. Rhode Island, Massachusetts, New York and Connecticut, in the order named, rank first in proportion of whites, themselves born abroad.

The following table shows, for each city of 250,000 or more inhabitants, the percentages of the total population represented by the foreign-born whites and the native whites of foreign and mixed parentage respectively:

PER CENT OF FOREIGN ELEMENTS IN PRINCIPAL CITIES

Cities	Per Cent of Total				
	Total Population, 1910 (thousands)	Native White, Native Parentage	Native White, Foreign and Mixed Parentage	Foreign-born White	Negro, Indian, Chinese, Japanese, and All Other
New York	4,766,883	19.3	38.2	40.4	2.0
Chicago	2,185,283	20.4	41.8	25.7	2.2
Philadelphia	1,549,008	37.7	32.1	24.7	5.5
St. Louis	687,029	39.3	35.9	18.3	6.5
Boston	670,585	23.5	38.3	35.9	2.2
Cleveland	560,663	23.6	39.9	34.9	1.5
Baltimore	558,485	46.8	24.1	13.8	15.2
Pittsburgh	533,905	33.0	35.9	26.3	4.8
Detroit	465,766	24.7	40.4	33.6	1.3
Buffalo	423,715	28.2	43.3	28.0	0.4
San Francisco	416,912	27.7	36.9	31.4	[1] 4.0
Milwaukee	373,857	21.1	48.8	29.8	0.3
Cincinnati	363,591	42.6	36.4	15.6	5.4
Newark	347,469	27.3	38.1	31.8	2.8
New Orleans	339,075	43.5	21.9	8.2	26.4
Washington	331,069	50.4	13.6	7.4	28.7
Los Angeles	319,198	53.2	23.4	19.0	[1] 4.4
Minneapolis	301,408	31.9	38.7	28.5	0.9
Jersey City	267,779	28.0	40.7	29.0	2.3

[1] Mainly Chinese and Japanese.

In New York City two-fifths of the population are foreign-born whites, another two-fifths native whites of foreign and mixed parentage, less than one-fifth of the total being native whites of native parentage. In 9 out of the 19 cities listed in the table the foreign-born whites exceeded the native whites of native parents. In all but four of the cities the two foreign white elements combined constituted more than half of the population, the exceptions being Baltimore, New Orleans, Washington, and Los Angeles.

The tremendous economic and political importance of the foreign elements in the population of the great cities would be even more forcibly brought out by figures showing the percentage which they constitute of the total adult population and of the males of voting age.

See AMERICAN RACE; CENSUS; POPULATION OF UNITED STATES; VITAL STATISTICS. **References:** U. S. Bureau of the Census, *A Century of Population Growth, from the First Census to the Twelfth* (1909), especially 128–131; *Abstract of the Thirteenth Census*, chs. ii, iii.

E. DANA DURAND.

FOREIGN POLICY OF THE UNITED STATES

Definition and Limitation.—Taken in its broadest sense, the term foreign policy of the United States might be made to cover a history of the foreign relations of the country. The more strict acceptation of the term, however, would seem to limit it to the peculiar and individual attitude adopted by the United States in its relations with other countries; or, in other words, to the special principles or policies which have been followed by the United States Government in its diplomatic intercourse with foreign states. It will thus exclude the policy which has led the nation to coöperate with other nations in establishing certain international institutions, such as the Postal Union, the International Health Office, the Union for the Protection of Industrial Property, which are, of their nature, equally serviceable to all nations. For the same reasons we may disregard international agreements, such as the Geneva Convention of 1864, and similar conventions adopted at the First and Second Hague Conferences, which are based on motives of humanity not peculiar to any one nation. The advocacy of international arbitration is a distinct feature of the foreign policy of the United States and the attitude of the Government on the question is the result not of disconnected acts but of fixed principle (*see* AMERICAN ARBITRATIONS; ARBITRATION AND PEACE).

Analysis.—The distinctive foreign policy of a nation may be considered under three headings: (1) as dictated by the needs of foreign commerce, where the object in view is the material prosperity of the nation through the advancement of the individual prosperity of its citizens; (2) as dictated by national necessity, where the object in view is national self-preservation, here taken in the broad sense including the safety and peace of the state; (3) as dictated by national advancement, where the object in view is the aggrandizement of the nation as a political entity. In many cases it will be difficult to separate the third of these divisions from the second, but in theory the line of demarcation between them is quite clear.

In considering these three elements as determining a state's foreign policy, account must be taken of the circumstances of national existence. The geographic position of the United States removes it from the scene of European politics, and the domestic political principles upon which the new republic was built have indirectly affected the attitude of the Government in certain of its foreign relations. In attempting to analyze the various policies of the United States it will frequently be found that a given course of action has been dictated by several distinct considerations, each of which should be weighed. Moreover, the foreign policy of the United States, like that of other countries, is subject to inconsistencies due to the changes of political parties, or to changes in the sentiment of the people as a whole.

Policy Determined by Needs of Foreign Commerce.—Among the list of grievances set forth in the Declaration of Independence is found the clause "for cutting off our trade with all parts of the world," and, although the position of the clause in that document is not prominent, it is probable that the commercial restrictions to which the colonies were subjected weighed as much with them as abstract theories of political rights. It was natural, therefore, that in its first treaty with a foreign power, the new republic should seek to secure foreign markets from which it had been previously excluded. In 1778 the United States negotiated with France a Treaty of Amity and Commerce, the articles of which are preceded by a preamble in which the parties adopt as "the basis of their agreement the most perfect equality and reciprocity." This preamble was pronounced by John Quincy Adams as being "to the foundation of our commercial intercourse with the rest of mankind what the Declaration of Independence was to that of our internal government." In 1784 Congress adopted certain resolutions for the guidance of American negotiators, which, besides requir-

ing that subsequent treaties should secure that the duties levied be those of the most favored nation, attempted to obtain for the United States the right to trade with the colonies of European nations.

After many years of ineffectual negotiation, England finally responded to the efforts of the United States (*see* COUNTERVAILING LEGISLATION) and Jackson's proclamation, in 1830, opening the ports of the United States to British vessels from British colonies upon equal terms with American vessels, was followed by reciprocal concessions on the part of England. The traditional commercial policy of the United States finds a recent expression in Secretary Hay's circular note of July 3, 1900, formulating the policy of the United States during the Boxer troubles: "The policy of the government of the United States is to . . . safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire" (*see* OPEN DOOR).

Intimately connected with the development and extension of commerce is the freedom to navigate the trade routes of the world. For years the piratical states of northern Africa levied tribute upon commerce to Mediterranean ports. As this commerce constituted an important element of American foreign trade, in 1784 Congress initiated negotiations with the Barbary Powers; and, subsequently, was able forcibly to compel a renunciation of all tribute.

River Navigation.—The endeavor to secure the free navigation of international rivers, that is, of rivers which are not wholly within the jurisdiction of one country, formed the subject of long negotiations (*see* NAVIGATION OF INTERNATIONAL RIVERS). When the colonies gained their independence, they found Spain occupying the lower portion of the Mississippi River and maintaining the right to close the navigation of that portion of the river lying between its territories. In 1795 Spain yielded her claim (*see* RIGHT OF DEPOSIT); but the United States had scarcely begun to enjoy the free navigation of the river when, in 1802, it was rumored that Spain had ceded Louisiana and the Floridas to France. Fearing that such a cession would deprive the United States of the privileges granted by Spain, Jefferson sent commissioners to France, and the purchase of Louisiana resulted. The principles asserted by the United States were formally promulgated by the Congress of Vienna, which, in an annex to the treaty of June 9, 1815, laid down the rule that rivers traversing the territory of the signatory Powers should be open to the commerce of all nations. In 1824 negotiations were begun with Great Britain to secure the right of navigating the lower portion of the St. Lawrence River; but it was not until 1854 that the United States obtained that privilege, and even then it was granted subject to suspension upon notice. Finally, by the Treaty of Washington, in 1871, it was declared that the portion of the river lying wholly within British territory "shall forever remain free and open for the purposes of commerce to the citizens of the United States." By the same treaty, the Yukon, Porcupine, and Stikine rivers were likewise opened up to the commerce of both nations. In 1853 a treaty with the Argentine Republic confirmed the concession of the free navigation of the Parana and Uruguay Rivers. Treaties with Bolivia (1858) and Paraguay (1859), and a voluntary decree of Brazil (1866), opened up the Amazon, La Plata, and Paraguay rivers.

Channels and Canals.—In 1853 the United States gave notice to Denmark of its unwillingness to submit any longer to the imposition of the Sound Dues, and in 1857 a treaty was concluded releasing United States vessels from the dues; the United States agreeing, however, to pay the sum of $393,011 in consideration of the maintenance by Denmark of the lights and buoys required for the navigation of the Sound.

In regard to interoceanic canals, the policy of the United States is expressed in the Clayton-Bulwer Treaty (*see*) of 1850, by which the contracting parties agreed to "guarantee the neutrality thereof, so that the said canal may forever be open and free." In the Hay-Pauncefote Treaty of 1901, the rules of the Convention of Constantinople of October 28, 1888, for the free navigation of the Suez Canal, are adopted by the United States as the basis of the neutralization of the Panama Canal: "The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality."

Right of Search.—During the thirty years following the treaty of peace with England in 1783, American commerce was greatly hampered by the assertion of a right on the part of England to board American vessels and search them for the purpose of carrying off alleged deserters from the British service and of enforcing colonial trade restrictions. This practice was associated in time of war with the impressment (*see*) of American seamen claimed to be of British nationality. In 1792 Jefferson sent positive instructions to the United States minister in England to the effect that "the simplest rule will be that the vessel being American shall be evidence that the seamen on board are such." Even the War of 1812 did not succeed in procuring the recognition of the principle asserted by the United States. Webster restated it in 1842, and in 1858 the Senate passed a resolution to the effect that the visitation or detention of an American vessel on the part of a foreign power in time of peace would be held to be "in derogation of the sovereignty of the United States"—after which the principle was recognized by Great Britain and came to have a fixed place in international law. The controversy over the right of search delayed, until 1862, the conclu-

sion of a treaty between the United States and England allowing a reciprocal right of search (*see*) within certain defined limits, for the purpose of suppressing the slave trade.

Policy Dictated by National Necessity. Neutrality.—When the colonies gained their independence, they found themselves a new state in a new world. Although surrounded by European colonies, they were separated from the actual centers of European domination by the formidable barrier of an ocean. At the same time, their government was based upon principles of individual liberty practically unrecognized in Europe. It was natural, therefore, that the new republic should adopt a policy of detachment from the political alliances by which the balance of power was being maintained in Europe. It is true that in the dark hours of the American Revolution, the colonies accepted aid from France at the price of an alliance; but the alliance was dictated by the exigencies of self-preservation, and did not represent the adoption of a permanent policy. When war broke out between France and England in 1793, the question was raised as to the obligations imposed upon the United States by the treaties with France in 1778. The United States had, by the treaty of alliance, guaranteed to France for all time "the present possessions of the Crown of France in America," but fortunately France did not demand the fulfillment of the guarantee. Jefferson took a determined stand and formulated a policy of neutrality (*see*) based upon the twofold principle that a nation has the right, as being sovereign within its borders, and the duty, as being neutral, of prohibiting acts of sovereignty from being exercised by either belligerent to the injury of the other. June 5, 1794, a neutrality act was passed defining the character of the prohibited acts and prescribing penalties for their commission.

Relations with American States.—The early policy of detachment from political connection with European nations dictated by the geographic position and the constitutional principles of the United States found its complement in the doctrine announced by Monroe in 1823. In 1815, the Holy Alliance had been formed by Russia, Austria and Prussia, and was soon joined by France and Spain. In the summer of 1823, the allies gave notice of their intention to take joint action in deciding upon the fate of the revolutionary states of South America. December 2, 1823, President Monroe, in his message to Congress, declared that the United States "should consider any attempt" on the part of the allied powers "to extend their system to any portion of this hemisphere as dangerous to our peace and safety." The Monroe Doctrine (*see*) is thus based upon the fundamental principle of self-preservation, though it is true that commercial interests and the sympathy of the United States with the struggle of the South American colonies for independence supported the stand taken by the Government. In the same message, Monroe also announced "that the American continents . . . are henceforth not to be considered as subjects for future colonization by any European Powers."

In December, 1851, the Hungarian patriot Kossuth (*see*) endeavored to secure intervention on the part of the United States in favor of his countrymen in their struggle for independence. Popular sentiment was aroused in his favor, but President Fillmore declined to intervene.

In 1895, the United States intervened in favor of Venezuela (*see*) by proposing to England to submit the boundary controversy between the two countries to arbitration, on the principle that, while the United States did not propose to relieve any American state "from its obligations as fixed by international law," at the same time, it could not allow the enforcement of those obligations to take the form of political control.

In the case of Cuba, the intervention of the United States in 1898 was dictated by a determination to put an end to a situation which for many years had been seriously disturbing the peace of the United States. In 1906, the United States and Mexico took joint action in constraining Honduras, Guatemala and San Salvador to keep the peace; but this step was an exceptional one, and the general policy of the United States towards the states of Central America has been one of friendliness, with the endeavor to make clear to them that the United States has no designs upon their territorial integrity.

The acquisition of Florida in 1819 may, with some hesitancy, be classed as an act of national necessity, and its close connection with the principle of the Monroe Doctrine pointed out. In a secret message to Congress in 1811 President Madison recommended "the seasonableness of a declaration that the United States could not see, without serious inquietude, any part of a neighboring territory, in which they have in different respects so deep and so just a concern, pass from the hands of Spain into those of any other foreign power." An additional motive for the acquisition is stated by President Monroe in his message to Congress in 1819: "Falling into the hands of adventurers connected with the savages, it [Florida] was made the means of unceasing annoyance and injury to our Union in many of its most essential interests."

Expatriation.—Owing to the necessity of protecting its naturalized citizens, who by the year 1840 were becoming an increasingly important element of its population, the United States was led to assert the doctrine of expatriation —that a man possesses the right to renounce his native citizenship and adopt that of another country, with the result of a release from all obligations to his native country.

The existence of a definite policy in this matter on the part of the Government is all the more marked in that the courts of the country, interpreting existing international law, had explicitly denied the doctrine (*see* ALIENS). In 1848 Secretary Buchanan announced that naturalized citizens were entitled to the same rights and privileges as if they had been born in the country, and in 1853 those rights were claimed for one who had merely filed his intention to become a citizen (*see* KOZTA INCIDENT). Later Secretaries of State denied that the obligations of a citizen to his native country could be thus set aside, but in 1859 the right of expatriation was more positively asserted than before. In 1868, Congress passed an act in which the right was declared to be a "natural and inherent" one. Since that time an endeavor has been made, but only with partial success, to obtain by treaty an acknowledgment on the part of other nations of an unqualified right of expatriation.

Policy Dictated by National Advancement. Expansion.—The existence of a definite policy of expansion (*see*) on the part of the United States would be a difficult proposition to prove, and yet in spite of repeated formal declarations by the Government that it has had no territorial ambitions, the fact remains that certain large territories not imperatively demanded by the needs of the country have been successively acquired by the United States since the beginning of the nineteenth century. The acquisition of the whole of Louisiana, in 1803, while not dictated by national necessity and not originally contemplated in the negotiations with France, was regarded by Jefferson as promising in due season "important aids to our Treasury, an ample provision for our prosperity, and a wide spread for the blessings of freedom and equal laws"—words which contain a suggestion of motives for future extension of territory. In the acquisition of Florida, as has been pointed out, national self-development appears to have played a less important part than national necessity. The acquisition of the territory ceded by Mexico in 1848, at the close of the war, was rather the result of an opportunity grasped by the victor than of predetermined policy. The acquisition of Alaska in 1867, due in large part to the exertions of Seward, met at first with an unfriendly reception on the part of the public, and within the next four years two attempts on the part of the Government at foreign expansion were checked by the Senate. Within the last two decades, imperialistic tendencies are distinctly manifested in the annexation of the Hawaiian Islands in 1898, in the acquisition of the Philippines and Porto Rico in the same year, and in the acquisition of the Samoan Islands in 1899.

See ANNEXATION, DIPLOMATIC PRINCIPLES OF; ANNEXATIONS TO THE UNITED STATES; ARBITRATION AND PEACE; BLOCKADE; CANAL DIPLOMACY; CHINESE IMMIGRATION; CLAIMS, INTERNATIONAL; COLONIZATION, PRINCIPLES OF; COMMERCE, INTERNATIONAL; COMMERCIAL POLICY AND RELATIONS OF THE UNITED STATES; CONSULAR SERVICE; DIPLOMACY AND DIPLOMATIC USAGE; DRAGO DOCTRINE; EXPATRIATION; EXTRATERRITORIALITY; INTERNATIONAL LAW, INFLUENCE OF THE U. S. ON; INTERNATIONAL UNIONS; MARITIME WAR; MONROE DOCTRINE; NATIONALITY; PAN AMERICAN CONGRESSES; RECOGNITION OF NEW STATES; TREATIES OF THE UNITED STATES; WAR, INTERNATIONAL RELATIONS OF; diplomatic relations with countries by name; diplomats by name.

References: J. B. Moore, *Am. Diplomacy* (1905), *Digest of Int. Law* (1906); J. W. Foster, *Century of American Diplomacy* (1900), *Am. Diplomacy in the Orient* (1903); A. B. Hart, *Foundations of Am. Foreign Policy* (1905), ch. vii.; A. C. Coolidge, *U. S. as a World Power* (1908); W. H. Trescot, *Dip. Hist. of the Rev.* (1852), *Dip. Hist. Administration of Washington and Adams* (1857); *U. S. Diplomatic Correspondence* (annual since 1861), since 1870 called *Foreign Relations of the U. S.;* P. S. Reinsch, *World Politics* (1900); *American State Papers, Foreign Relations* (1789–1828); bibliography in A. B. Hart, *Foundations of Am. Foreign Policy* (1905), ch. viii, *Manual* (1908), *passim*; J. B. Henderson, Jr., *Am. Diplomatic Questions* (1901); T. Lyman, Jr., *Diplomacy of the United States* (2d ed., 1828); Eugene Schuyler, *Am. Diplomacy and the Furtherance of Commerce* (1886); Am. Acad. of Pol. and Soc. Sci., *Annals* (1889); T. S. Woolsey, *America's Foreign Policy* (1898).

CHARLES G. FENWICK.

FOREST SERVICE. The Forest Service is a division of the Department of Agriculture (*see* AGRICULTURE, DEPARTMENT OF) under the charge of the Forester. He first took charge of the national forests, through their transfer from the Department of the Interior on February 1, 1905. The total area of the national forests, June 30, 1910, was 166,103,621 acres in the United States, exclusive of 26,761,626 acres in Alaska, and 65,950 acres in Porto Rico. The Forest Service undertakes the maintenance of these forest lands, the cutting and sale of timber, protection against fire, artificial reforestation in default of natural reproduction, the development of mineral lands and of water power, the regulation of grazing in forest reservations, and the study of problems of utilization of forest products. The work of the service is carried on by the five branches of lands, operation, silviculture, grazing, and products. The Forest Service received an appropriation for the fiscal year ending June 30, 1910, of $4,646,206, and employed a force of 2,536 men. See CONSERVATION; EDUCATION IN FORESTRY; PUBLIC LANDS, RESERVATION OF.

Reference: U. S. Forest Service, *Annual Reports.*

A. N. H.

FORESTRY, EDUCATION IN. See EDUCATION IN FORESTRY.

FORFEITURES. See FINES AND FORFEITURES.

FORFEITURES AS A SOURCE OF REVENUE. Considerable amounts of property come into the hands of various governments, either by abandonment by the owners, or through seizures resulting from detected frauds.

Abandoned Property.—In the first class is the taking over of real estate because of unpaid taxes. In some states, as New York, taxes sometimes accumulate for ten years, but in most states, non-payment for two or more years is a legal ground for taking possession of the property, and selling it. Any sum realized over the taxes is commonly turned over to the owner if any is found; and he has also a right of redemption from the purchaser, within a fixed limit of time. Where there is no market for such real estate, the forfeitures may accumulate in the hands of the government, as is the case in the Adirondacks where such lands form the basis of the state forest reservation.

Imported goods which are not claimed, or on which the duty remains unpaid, are also subject to forfeiture and are from time to time sold at auction for the benefit of the Treasury. Unclaimed savings banks deposits are in some states, as Massachusetts, eventually turned over to the state, though in such cases the claim of a legal owner would be recognized. The transfer of the real estate of persons dying intestate and without heirs is akin to forfeiture.

Forfeitures for Fraud.—The most active practice on forfeitures arises in the formal seizure of taxable property because of an attempt to evade the taxes. Under the internal revenue system (*see*) liquors, tobacco and other subjects of taxation may be seized, either at the factory or in transit, or in the hands of purchasers if the tax has been evaded. Seizures of imported goods are frequent; in many cases they are sold for the benefit of the government; in other cases the owner is allowed to pay a penalty and retain the goods. Of late years the seizures of passengers' baggage have been frequent. The forfeitures reported by the treasury for the fiscal year 1910–1911 were $597,416.58.

Bail.—Forfeitures of cash bail or recovery by suit against the sureties on the bond are frequent. A recognized method of escape from prosecution is to find friends who will put up the bail with the understanding that the person bailed will disappear. The annual amount of such forfeitures is impossible to estimate, but undoubtedly runs into the millions.

See FINES AS SOURCES OF REVENUE; FRAUDS ON THE TREASURY; PASSENGERS' BAGGAGE, DUTIES ON; REVENUE, PUBLIC, SOURCE OF; TARIFF ADMINISTRATION.

References: U. S. Sec'y of the Treasury, *Annual Reports*; *U. S. Statistical Abstract.*

ALBERT BUSHNELL HART.

FORTIFICATIONS. During colonial times small forts were built at most of the coast settlements, such as Jamestown, Boston, New Amsterdam, for protection from pirates and foreign enemies; and as settlement progressed frontier forts were built for protection against Indians and their foreign allies such as Fort Orange, Fort Cumberland. Under the new Constitution, the Federal Government took over almost all the fortifications that were still in existence; and has continued the system of external defences and internal posts. The external defences have, from time to time, been modified to agree with the growth of the art of war (*see* COAST DEFENCES); the internal posts have now long ceased to be necessary for protection against Indians; but most of them are still in existence, either as almost abandoned barracks, or as camps for the instruction and the housing of the Federal Army.

The present tendency is to abandon the posts situated within the limits of populous cities. Military fortifications of any kind are not constructed till the state authorities, if there be such, have ceded jurisdiction over the site to the Federal Government.

The question of fortifying the Panama Canal has recently increased interest in this matter. The fortifications for the defense of the Panama Canal, appropriations for which were made in 1911, will consist, first, of seacoast forts at each terminal and, second, of field fortifications around the locks. The object of the seacoast forts is to prevent an enemy in war from blocking the canal by sinking vessels within, and to provide an area at each end in which our own fleet can emerge and take up battle formation under the protection of the fire from our own forts. The plan of fortification was drawn by a board consisting of selected officers of the Army and Navy. Approximately $6,000,000 has been appropriated for the purpose.

See ARMY, STANDING; COAST DEFENCE; MILITARY DISCIPLINE; MILITARY LAW; MILITARY PRISONS; MILITARY RESERVATIONS; NAVY YARDS; POSTS, MILITARY.

References: H. V. von Schwartz, *Influence of Port Arthur on Modern Fortresses* (trans. from Russian, 1908); U. S. Board on Fortifications, *Report*, 1886; U. S. Naval, Military and Electrical General Office, *Study of Exposed Points on our Frontier* (1885); U. S. Ordinance and Fortification Board, *Annual Reports.*

ALBERT BUSHNELL HART.

FORTY-NINERS. Those who migrated to California at the time of the great gold fever in 1849. See CALIFORNIA. O. C. H.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such States, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizenns shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Adoption.—Of the five sections of the Fourteenth Amendment, the second was the first to make its appearance in Congress. It was devised to curtail the increased political power of the South resulting from the abolition of slavery and the consequent necessity of counting not three-fifths of the negroes but all of them, in determining the apportionment of representatives in Congress (Art. I, Sec. ii, ¶ 3). What was intended by the authors of the second section, therefore, was that the southern states should either enfranchise the freedmen, who, it was reckoned, would vote with the Republican party, or have their representation proportionately diminished. The third section was also prompted by obvious political motives. The fourth expressed current apprehensions. Section 1 was designed to override the Dred Scott decision and confer citizenship upon the negro race, and to put the principles of the recent civil rights bill, which decreed equal civil rights for negroes and whites within the states, upon a legally indefeasible basis, as well as to put them beyond the reach of repeal should the Democratic party come into power. Section 5 was designed to give Congress the power to carry out the provisions of the other sections but particularly the provisions of Section 1.

The amendment having passed the two houses by the required two-thirds majority was certified to the states by Secretary Seward June 16, 1866. Of the states that had recently attempted secession Tennessee at once ratified and was in consequence promptly restored by Congress to representation in that body. In the ensuing congressional campaign the issue was plainly whether the Johnsonian state governments should be recognized by Congress and their representatives seated, or whether they must first adopt the proposed amendment under pain of being set aside if they did not do so. The result of the election was the return to Congress from the northern states of a larger Republican majority than before, but the presidential governments, owing partly to Johnson's own blindness in the matter, failed to heed the warning. Before January 1, 1867, all of them but three had rejected the proposed amendment by large votes, and the remaining three soon followed suit. With these results before it, Congress decided to undertake the work of reconstruction (*see*) itself, upon the basis of negro suffrage (*see* NEGRO SUFFRAGE); and the new governments established upon this foundation promptly proceeded to ratify the amendment. Meantime, however, the legislatures of Ohio and New Jersey had passed resolutions rescinding their previous acts of ratification. Brushing aside these resolutions as unallowable, Congress, on July 21, 1868, declared "the Fourteenth article . . . a part of the Constitution of the United States" and ordered the Secretary of State to promulgate it as such. Seven days later Mr. Seward complied, but not until Georgia's ratification of the Amendment had rendered the question of the effect of Ohio and New Jersey a purely academic one.

The Vital Portions.—The subsequent history of the Fourteenth Amendment has confined its vitality to the two final clauses of the first section. Thus the fourth section, for which there was probably no serious need at any time, produced its result automatically upon the adoption of the amendment. The third section was largely eliminated by the Amnesty Act (*see*) of May 22, 1872, by which Congress removed the disabilities imposed by that section from all southern leaders, save only

those who had served in the 36th or 37th Congresses or had, previous to the war, held judicial, military, naval, or diplomatic office under the United States, or had been heads of departments in ministerial office. The second section has eventually met the same general fate, since the forfeiture contemplated by it has never been exacted. This has been due principally to two causes. Originally, when the sentiment of the Republican party would have supported such exaction, it appeared to have been rendered unnecessary by the Fifteenth Amendment (*see*). Latterly, though the negro is largely kept from voting under the new southern constitutions by tests which the Fourteenth Amendment does not reach, that sentiment has, for abiding reasons, much diminished; and even had it not, with the Democratic party in possession of the Government (1914), the idea of cutting down southern representation in Congress by an application of the provisions of the Fourteenth Amendment becomes farcical.

Interpretation of the First Section.—Turning to the first section, there can be no doubt that the minimum expectation of its framers was that it would make the first eight amendments binding upon the states, as they already were upon the Federal Government, and that it should be susceptible not only of negative enforcement by the courts but also of direct positive enforcement by Congress. Moreover, Congress undertook to act upon this theory without delay. In 1870 it passed the Enforcement Act, providing penalties not only against state officers, but also against private persons who should, under color of any law, statute, ordinance, regulation, or custom, deprive anyone of his civil rights and civil equality. A year later it passed the "Ku-Klux Act" of the same general import, and in 1875 the Civil Rights (*see*) Act, decreeing the "equal enjoyment of the accommodations . . . of inns, public conveyances, . . . theatres and other places of amusement . . . to citizens of every race and color regardless of any previous condition of servitude." The purport of this legislation is palpable; it rested upon an interpretation of the Fourteenth Amendment which put Congress in a position to control at its discretion all the ordinary relations of private persons within the United States. A single obstacle to the final establishment of this view remained, namely the United States Supreme Court, but it soon became evident that this obstacle was insurmountable.

By a series of decisions the most important of which were those in the Slaughter-House cases and the Civil Rights cases, in which latter the act of 1875 was overturned, the Supreme Court established the following principles: (1) that the prohibitions of the Fourteenth Amendment are addressed to the states as such and not to private persons; (2) that these prohibitions contemplate only positive state acts and not acts of omission; (3) that the amendment recognizes a distinction between state citizenship and United States citizenship; (4) that it protects from state abridgement only "the privileges and immunities" which the Constitution by its other provisions bestows upon "citizens of the United States" as such. The underlying *ratio decidendi* of these decisions is indicated by the following passage from Justice Miller's opinion in the Slaughter House (*see*) cases: "Was it the purpose of the Fourteenth Amendment, by the simple declaration that no state should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all . . . civil rights . . . from the states to the Federal Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the states? . . . We are convinced that no such results," results which would radically change "the whole theory of the relations of the state and Federal governments to each other and . . . to the people," "were intended by the Congress which proposed these amendments, nor by the legislatures which ratified them."

Subsequent developments in the field of constitutional interpretation have rendered the two final clauses of the first section the most effective of all constitutional checks upon state legislative power, save only perhaps the commerce clause of the Constitution. The check in question however is exercised exclusively by the judiciary and proves of little value to the negro voter, since the court, not regarding the right of suffrage as a property right, withholds from it the protection of injunction (Giles *vs.* Harris, 189 *U. S.* 474). The general subject of the interpretation of the due process of law clause of the Fourteenth Amendment is treated of in the article on due process of law (*see* Law, Due Process of).

See Citizenship in the United States; Civil Rights, Constitutional Guaranties of; Constitution of the United States, Amendents to; Due Process of Law; Equality Before the Law; Freedom of Contract; Judicial Proceedings; Munn *vs.* Illinois; Person, Legal Sense of; Privileges and Immunities.

References: W. A. Dunning, *Reconstruction, Political and Economic* (1907), 66–68, 85–125, 260–265, *Documentary History of the U. S. of America*, II (1894), 638–794; H. E. Flack, *Adoption of the Fourteenth Amendment* (1908); W. D. Guthrie, *Lectures on the Fourteenth Amendment* (1898); F. J. Swayze, "Judicial Construction of the Fourteenth Amendment" in *Harvard Law Review*, XXVI (1912), No. 1.

E. S. Corwin.

FRANCE, DIPLOMATIC RELATIONS WITH

Earliest Treaties (1778-1793).—In seeking international standing, after the revolt against England, the United States turned to France. Negotiations through Franklin resulted (Febary 6, 1778) in a treaty of amity and commerce and also a treaty of alliance, by which the United States, in recognition of French aid, guaranteed the French possessions in America and agreed to receive her prizes into American ports. In the peace negotiations of 1782, however, France favored the Spanish proposal of cis-Appalachian limits.

In 1784 Franklin signed a consular convention which proved unacceptable and which was somewhat altered by Jefferson in 1788 so as to conform to the plans of Congress. After receiving the unanimous consent of the Senate it was made effective by Congress (April 14, 1792).

Meanwhile the tendency of American commerce, in spite of royal French decrees, to revert to its old channels, produced dissatisfaction in France. The French Government also complained in 1790 that the tariff legislation of Congress, which included a discriminating tonnage duty, was an infraction of the treaty of 1778, and adopted retaliatory measures. In 1792, following instructions of Secretary Jefferson, who desired to secure a new commercial convention, Gouverneur Morris (July 9) began negotiations, the course of which were radically changed by the revolutionary proceedings of August.

Struggle for Neutrality (1793–1796).—At the opening of war between France and England in 1793, the United States and France became involved in embarrassing controversies and discussions concerning the construction and enforcement of their treaties. France, under the treaty of 1778, claimed the right to adjudicate, sell and refit her prizes in American ports; and under the convention of 1788 claimed a consular jurisdiction embarrassing to a neutral. The American Government under the circumstances of the war claimed release from the treaty obligations of guaranteeing the French West Indies.

In the interest of national salvation, Washington issued (April 22, 1793) a proclamation of neutrality. Genêt, who arrived at Charleston June 8, expecting to use American territory as a base to recover Louisiana, impertinently claimed privileges even beyond those granted by treaty; and, in defiance of Washington's proclamation, proceeded to fit out French privateers for which he demanded permission to return with their captures. The American Government objected, demanded the return of British prizes seized in American waters, and maintained that American courts instead of French consular courts should determine whether captures had been made in American waters. In August it requested the recall of Genêt, which was accorded by the French Government.

May 9, 1793, the French national convention threatened American commerce by directing French armed vessels to seize ships carrying merchandise belonging to the enemy or bound for the enemy's port. Later it placed an embargo on American vessels at Bordeaux and captured American ships and goods.

Meantime Gouverneur Morris, appointed minister to France in 1792, had become unacceptable to the revolutionary party; and, on request of the French executive council, Washington recalled him (May 27, 1794) and appointed James Monroe as successor, instructing him to protest against illegal seizures and violations of treaties, to remove the suspicions concerning the Jay mission (*see*), and to seek French aid in obtaining from Spain the free navigation of the Mississippi. To Monroe, who was cordially received, the Directory complained of violations of both the treaty of 1778 and the consular convention of 1788, and of discrimination against France by the clause of the Jay treaty relating to contraband. Monroe was recalled in disgrace in 1796, and Adet was recalled from Philadelphia, leaving no French minister until 1800. Meanwhile the Directory refused to receive or recoginze Pinckney or any American minister, until the American Government should make reparation; and issued new decrees aiming to destroy American commerce and prefiguring the later Berlin and Milan decrees.

Pinckney was compelled to retire to Amsterdam, but later returned to Paris in 1797 with John Marshall and Elbridge Gerry whom President Adams had appointed to join him in the French mission; but they failed to open direct negotiations with Talleyrand who seemed to prefer preliminary clandestine communication through secret agents who demanded a national loan and individual bribes. Later (March 18, 1798) Talleyrand was disposed to treat with Gerry alone who, although he remained in Paris after the departure of his colleagues, declined to enter into formal negotiations.

The return of Marshall and Gerry caused Congress to suspend commercial intercourse with France and her dependencies, to prepare for war (May 28 and June 22, 1798) and to declare (July 7) the abrogation of treaties. There were actual hostilities at sea in several instances.

Later assurances made to William Vans Murray, American minister at the Hague, that

France desired to treat through a suitable envoy, resulted in the appointment by President Adams (without consultation of his cabinet), of a new temporary commission—with instructions to assume that previous French treaties had been revoked by Congress; to demand indemnity for damages to American commerce before July 7, 1798 (date of abrogation of the treaties); to make a treaty (limited to twelve years) free from previous objectionable provisions; and to establish a claims commission. After tedious negotiations with Napoleon, who insisted that the previous treaties were in force, the commission abandoned its instructions by sacrificing the French spoliation claims (*see*); but secured a temporary convention (September 30, 1800) which (after amendment by the Senate and Napoleon) released the United States from the treaty obligations of 1778 and France from responsibility for all damages.

Louisiana and Commerce (1803–1812).—This adjustment delivered the United States from the perils of war and made possible the peaceful acquisition of Louisiana (*see*) from France three years later by negotiations of Livingston and Monroe. That transaction was followed by diplomatic correspondence relating to disputed boundaries of the territory acquired; and later by efforts to get French coöperation in the negotiations with Spain—until the later Napoleonic decrees and reprisals on neutral commerce, met by the vigorous but unsuccessful protests of Armstrong at France, gave a new turn to diplomatic relations.

Spoliation Claims (1814–1836).—For a quarter of a century after the restoration of the Bourbons in 1814 Franco-American relations were comparatively unimportant. Aside from questions arising from the French occupation of Spain in 1823, the most important diplomatic question was the French Spoliation claims for injuries to American commerce by the Berlin and subsequent decrees; which, after awaiting a more stable French government, began to be pressed by Secretary Adams in 1819. At the same time France claimed damages for alleged violations of the "favored nation" clause of the treaty of 1803. On these subjects Adams and De Neuville the French minister could reach no agreement—although they negotiated (1822) a convention of navigation and commerce greatly reducing discriminating duties.

The claims remained unsettled until by the Rives-Sebastiani treaty of July 4, 1831, France agreed to pay 25,000,000 francs in satisfaction of certain claims. The delays of the French chamber of deputies, and the refusal (April, 1834) to appropriate the necessary money resulted in the recall of Livington from Paris in 1835, followed by the recall of Pageot from Washington. Although diplomatic relations were suspended for over a year, the French Government, partly through mediation of Great Britain, soon took steps toward their restoration by providing for payment of the obligations.

Treaty Relations (1840-1853).—In 1841, Lewis Cass, the American minister at Paris, protested against the quintuple treaty which tended to show the American Government in a bad light. A treaty of extradition was signed November 9, 1843. A consular convention concluded in 1853 contained a provision protecting consuls against compulsory appearance as witnesses before courts, the violation of which in 1854, at San Francisco, occasioned serious complications which, however, were happily adjusted.

French Policy under Napoleon III (1852–1867).—American diplomatic correspondence from the accession of Napoleon III to the French throne shows increasing apprehensions of the tendency of French diplomacy in Mexico, and of concerted action of France and England in a policy relating to Cuba and the political adjustment of the Americas.

Franco-American relations during the Civil War, often severely strained, were largely determined by Napoleon's policy in Mexico, and by the determined and persistent watchfulness of the American Government to prevent European recognition of the Confederate insurgents. Intervention in the Civil War for a time seemed likely through the concerted action of European powers under the influence of Napoleon; the American Government never ceased opposition to Napoleon's Mexican expedition, which in spite of his friendly assurances, was regarded as a deliberate attempt to establish a Latin American barrier against American influence on the continent. The establishment of the Franco-Maximilian empire in 1864 was regarded as a blow at the Monroe Doctrine, and its bearing upon the future politics of the American continent was a subject of much speculation and concern. Relations were further strained by apprehension that a Franco-Confederate alliance would be formed as a counterpoise to the strength of the United States, and as a strategic step in the extension of French dominion southward from Mexico to the gate of the isthmus. After the failure of the Confederate attempt to destroy the Union, American diplomacy successfully centered its efforts on urging the withdrawal of French troops by which Maximilian had been sustained.

Franco-Prussian War.—During the Franco-Prussian War of 1870 the American diplomatic representative at Paris assumed a position of unusual prominence. While maintaining friendly relations with the French he rendered important services to the German and other foreign residents of Paris and to the Prussian Government.

Later Questions (1870–1898).—Among the subjects affecting diplomatic relations after 1870, the most important, aside from questions

incident to naturalization and citizenship, were the formation in 1881 of a French company for the construction of a canal across the Isthmus of Panama (*see*), and French restrictions on the importation of American pork products. These latter were a theme of continuous diplomatic correspondence from 1880 until their repeal was secured, in 1891, by Whitelaw Reid, the American minister, after the enactment of American legislation providing for thorough inspection of all meats intended for exportation.

A claims convention concluded in 1880, was supplemented in 1882 and 1883. A reciprocity arrangement of May 28, 1898 (followed by the negotiation of a reciprocity convention of July 24, 1899, which, however, was not ratified) was amended and supplemented on August 20, 1902.

Relations Since 1898.—Although French sympathy for Spain early in the Spanish-American War was noticeable, the Government was irreproachable in its conduct and the French minister at Washington tactfully performed the delicate task of opening negotiations for peace. Later signs of ill-will caused by the American policy in the Far East—especially the American opposition to the designs of Russia, the ally of France—have more recently been succeeded by good feeling illustrated by several international amenities. With the elimination of the last real danger from conflicting interests by the American purchase of the property of the bankrupt French Panama Canal Company, Franco-American relations are on a more satisfactory basis than they have been for a century. An arbitration convention of 1899 was concluded in 1907. A more comprehensive arbitration treaty was signed on August 2, 1911, but was emasculated by the Senate, March, 1912.

See Berlin Decree; Boundaries of the United States, Exterior; Canal Diplomacy; Claims, International; Commerce, International; Contraband; Diplomacy and Diplomatic Usage; French Panama Canal; French Spoliation Claims; Louisiana Annexation; Maritime War; Mexico, Diplomatic Relations with; Milan Decree; Monroe Doctrine; Neutrality, Principles of; Neutral Trade; War, International Relations of; Wars of the United States.

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J. M. Callahan.

FRANCHISE. See Suffrage; Woman Suffrage.

FRANCHISES, CORPORATION, FINANCIAL ASPECTS OF. A corporate franchise is to be sharply distinguished from a corporate charter. A charter is the grant from the state to an association of individuals of the right to do business as a corporation. A franchise is an authorization to a corporation to occupy a particular street or highway with its pipes, wires, tracks, etc. It is the permission to use public property given to a private corporation. The use is generally regarded as connected with the public interest. The granting of the franchise is usually in the power of the municipal body having jurisdiction over the property to which the franchise relates. The company which desires to do business in the streets of a city must, therefore, first obtain authority from the city to carry on these operations, and the city is allowed to make such provisions or conditions as it may wish. The city can drive a bargain for the use of its property and can name such conditions as it can induce the company to accept as a condition of their using the streets.

Franchises were formerly, with few exceptions, granted in perpetuity, and were given to corporations with little or no compensation to the cities. It was the general opinion that the great benefits which cities derive from the construction of electric railways, and gas plants, were sufficient compensation for the benefits derived by the companies. The risk in these undertakings was also, until recent years, considerable, and it was difficult to obtain the large amounts of capital necessary unless liberal terms were extended by the city.

In recent years, public opinion upon the subject of public service franchises has radically changed. It is now recognized and admitted by company officials that the business of supplying transportation, light and power in large cities is safe and highly remunerative. Capital can be secured for these enterprises to any desired amount. The value of the monopolistic privileges, conferred by franchises is, moreover, constantly increasing as the cities grow in size. It is now quite generally believed that franchises should be granted only for limited terms; the state of New Jersey, for example, limits the duration of franchises to twenty years, and that they should provide for

proper compensation to the city. The plan of compensation which is gaining in favor is that of Chicago, where the city and the Chicago Railways Company divide the net earnings, 55 per cent to the city, and 45 per cent to the company. A similar plan providing for the equal division of all profits, after six per cent has been paid on the stock, is provided in the contract between the city of Philadelphia and the Philadelphia Rapid Transit Company. Provision is also usually made in franchise contracts for the performance of certain duties by the company, such as keeping the streets in repair and free from snow and ice.

In order that capital may not be discouraged from investing in the securities of public service corporations by these restrictions, provision is now usually made for compensation to investors of the old company in case the franchise contract is not renewed. In Chicago, for example, the contract between the city and the Railways Company provides that at the termination of the agreement, the city can take the property at its original value plus the cost of the additions authorized by the board of supervising engineers; or a private company, if nominated by the city, must pay to the present company, the same amount, plus ten per cent. In the renewal franchise the city can make such terms as it finds expedient. No difficulty has been encountered by the Chicago Railways Company in obtaining large amounts of capital under this contract.

See Monopolies; Public Service Corporations; Securities, Federal Commission on.

References: G. C. Sikes "Question of Franchises" in *Atlantic Mo.*, XCI (1903), 408; "Should Franchises be Capitalized?" in *Outlook*, XXXVI (June 15, 1907), 313–314; A. W. Spencer, " Should Public Franchises be Treated as Corporate Property?" in Am. Acad. of Pol. and Soc. Sci., *Annals*, March, 1907, 352–356; J. Murphy, "Franchise Grants in New York City" in *ibid*, XXI (May, 1908), 612–618; W. S. Allen, "Street Railway Franchises in Massachusetts" in *ibid*, XXVII (January, 1906), "Accounts of Guarantees of Municipal Franchises" in National Conference of Good City Government, *Proceedings*, 1899, 162–168; New Jersey Commission, *Relations between Municipalities and Street Railways; Report on Best Form of Franchises*, 1906; Special Committee of Massachusetts Legislative, *Report on Franchises* (1897); H. Bruère, *New City Gov.* (1912), 56; Am. Telephone and Telegraph Company, *Annual Report for 1911;* National Municipal League, *Conference for Good Government*, 1910; Public Service Commission for the First District of New York, *Franchises of Electrical Corporations in Greater New York* (1911); D. F. Wilcox, *Municipal Franchises* and year by year. Edward S. Mead.

FRANCHISES, CORPORATION, LEGAL ASPECTS OF

Definition.—(1) The term franchise is generally used to denote a special privilege conferred by a government on individuals, not otherwise possessed by such individuals by common right. The early conception of the nature of a corporation was that it could only be formed and could only exercise its powers by virtue of a grant from the sovereign. The right of individuals to associate themselves together and act in a corporate capacity was not a common right. Under this conception the right specially granted to individuals to form a corporation as well as the right of the corporation formed, as an artificial person, to exercise the powers and privileges conferred by the charter of its creation could properly be spoken of as franchises. Under our state constitutions and also, now, in England, the legislative department of government may exercise the sovereign power to grant charters to corporations, and the charters thus specially granted with us may properly be spoken of as conferring franchises. But in consequence of a general tendency to avoid the granting of special privileges it has been customary for our state legislatures to provide by general law the methods and conditions of forming corporations, the right to incorporate being thus recognized as one available to any collection of persons for purposes and in methods thus prescribed. Under general laws providing for the creation of corporations the privilege of incorporating has ceased to be in any sense a franchise and has become a matter of common right. But the rights and privileges of the corporation as such may still with propriety be spoken of as a franchise, resulting from a contract with the state which may not be impaired (*see* Contract, Impairment of; Dartmouth College Case). The purposes for which a corporation is formed may also involve the exercise by it of certain privileges not possessed by individuals such as the right of eminent domain (*see*) on the part of a corporation formed to promote a public purpose, for instance, the construction and operation of a railroad, canal, telegraph line, or irrigation plant. The right of the corporation to exercise such powers may properly be spoken of as a franchise.

(2) Municipal corporations may contract with private corporations to supply public facilities which the municipality might by legislation be authorized to provide at the public expense, such as street car lines and plants for furnishing water, light and power to the in-

habitants of the city. These contracts with corporations involving the privilege of using the public streets and other like public privileges may also be properly spoken of as franchises.

As Property.—The mere right of a private corporation to do business as such in competition with private individuals engaging in the same form of business can perhaps not be considered in itself as constituting property, but any exclusive right possessed by the corporation in the nature of a franchise is a property right although it may not be of such nature as to be assignable or transferable and therefore may not be subject to levy under execution. An exclusive privilege of a public nature possessed by a corporation may be appropriated for other public purposes or uses only upon making just compensation. Such privileges are subject like other property to regulation in the exercise of the police power (*see*) and are protected by the usual provisions as to due process of law (*see*). As a franchise is the result of a public grant it is to be strictly construed as against the corporation claiming it, the presumption being that the sovereign power has not, except by specific provision, limited itself with reference to the general right to regulate for the public welfare (*see* CHARLES RIVER BRIDGE *vs.* WARREN BRIDGE).

Taxation.—The power of taxation may be exercised as to private corp rations in a variety of ways. The shares of stock in the corporation may be taxed to the owners as property in accordance with their value. The corporation itself may be taxed on the basis of property owned by it as other owners are taxed for like property. And the corporation may be taxed directly on the basis of the entire value of its property including its corporate franchise and any other franchises which it possesses. Finally the corporation may be taxed as any other owner on a property basis and also taxed on account of its franchises. It is often difficult to determine whether a specified tax on corporations is a franchise tax or a property tax, the importance of the distinction being that property may be taxed in any state in which it is situated or used, while a franchise can be taxed only in the state in which it is granted. But even a foreign corporation may be taxed in any state in accordance with the value of the proportion of its property used in that state, the value of its franchises being taken into account in determining such value.

Limitations on Power to Tax.—Aside from the limitation already suggested, that a corporate franchise can only be taxed in the state in which it is granted and enjoined, there seem to be no specific limitations on the taxation of corporate franchises save these—that a franchise granted by the Federal Government can not be taxed by a state and that corporations engaged in interstate commerce can not be so taxed by any state as that a burden is imposed upon interstate commerce as such. The exemption of federal franchise does not extend beyond the franchise itself. Property owned by a corporation exercising a federal franchise and situated or used in any state may be taxed in that state as other property. The exemption of interstate commerce extends only so far as is necessary to protect the corporation against discriminations in taxation calculated to interfere with the freedom of such commerce.

See CORPORATION CHARTERS; INTERSTATE COMMERCE AND CASES; PUBLIC SERVICE CORPORATIONS; QUASI-PUBLIC CORPORATIONS; RAILROAD, STREET; TRANSIT IN CITIES; TRANSPORTATION.

References: H. O. Taylor, *Law of Private Corporations* (4th ed., 1898), ch. viii; A. W. Machen, *Modern Law of Corporations* (1908), ch. i; V. Morawetz, *Private Corporations* (2d ed., 1886), chs. xi, xiii; J. H. Beale, *Foreign Corporations and Taxation of Corporations* (1904), chs. xx, xxx.; as to taxation of franchises, see Henderson Bridge Co. *vs.* Kentucky (1897), 166 *U. S.* 150; as to the federal corporation tax, see Flint *vs.* Stone Tracy Co. (1911), 220 *U. S.* 107. EMLIN MCCLAIN.

FRANCHISE TAX. Basis.—A franchise is a right conferred by government of conducting an occupation in a particular way or accompanied with particular privileges. Broadly interpreted it includes patents, copyrights, the privilege of inheritance; but the most familiar example of such grant of privilege is to be found in the corporation with its rights of limited liability and continuity of charter privileges; and as a consequence the franchise tax as employed in the United States is a tax on corporations.

At first it had special reference to a tax on public service corporations, and was justified as a payment for the right to use streets, highways, and public places for special purposes. Its object was not only to secure revenue from other taxpayers, but also to force such corporations using public property to share their profits with the public. Later, the tax was extended to private corporations. As Seligman states:

> The corporate franchise is really the privilege of juristic personality and limited liability; it is the right to exist as a corporation. Since it is something separate and apart from the property of the corporation, it is capable of being taxed.

Corporations may be distinguished as domestic, which in a given state includes only those of its own incorporation; and foreign, or those chartered outside of the state. Strictly speaking, a state can impose a tax only on privileges which it itself grants, that is domestic franchises; it may, however, tax foreign corporations as to their business, thus bringing them within the scope of the state's revenue power.

Advantages.—The franchise tax has largely been developed because of the difficulties of collecting the general property tax. As the securities of corporations could not be reached in the hands of their owners, there was a general conviction that the owners of corporations escaped their share of taxation. Therefore the corporation was taxed. Seligman says: "If the corporation tax is held to be a franchise tax, there is no necessity of uniformity between the tax on individuals and that on corporations. Secondly, according to the principles of the property tax, deductions are allowed for certain classes of exempt or extraterritorial property. If the tax is a franchise tax, such exemptions cannot be claimed. Thirdly, if the tax is a franchise tax, and not a tax on property or earnings, it may be upheld as not interfering with interstate commerce." A tax on gross receipts which is derived from interstate commerce conflicts with the Federal Constitution; but the Supreme Court has upheld a tax on a franchise, although the amount of gross receipts is used as a basis of computing the value of the franchise.

While every corporation has a franchise, and the franchise tax may be applied to all kinds of corporations, the term, as sometimes used, is confined to the taxation of corporations which have the power of eminent domain or have been given the right to use public rights of way for a special purpose and in a special manner. Among such franchises are to be found those conferred on railroads, street railways, express, telegraph and telephone companies, and supplying light, heat, and power corporations.

Valuation.—In the effort to reach the property of corporations, and especially that of public service corporations which have monopolistic privileges, the several states have tried many different ways of determining the value of the franchise. A common method is to subtract the value of the real estate and other physical property from the value of the securities, and to consider the difference as the value of the franchise. This is frequently called the corporate excess. In Massachusetts the tax is paid directly to the state by the corporation, and the receipts are then distributed to the cities and towns in proportion to the number of shares owned; or in the case of street railways, according to the miles of street railway owned in each town. Shares are assessed at their market value, deductions being made for real estate and other items locally taxed.

There are many variations in the application of the general principle just described, and in some states the standard of measurement is exceedingly crude, as, for example, in taking the capital stock, bonded debt, business, gross earnings or dividends as indices of franchise value.

According to the classification made by Plehn, there are four different ways of obtaining revenue from a public service corporation through its franchise: (1) to consider the privilege as property and include this in the valuation of taxable property; this valuation may be arrived at in one of two ways: (a) by valuing the tangible property and then adding an amount equal to the difference between that and the value of the stock, including bonds; this is the "corporate excess" referred to above, so termed in Illinois, or the "value of the franchise," as in California, or "the value of the tangible property," as used in other states; (b) by ascertaining the earnings and capitalizing them; and then proceeding as in the first plan to obtain the corporate excess; (2) to tax the net earnings; (3) to tax the gross earnings; (4) to levy special annual license taxes.

Objections can be brought against all these methods. The valuation of privilege, if the franchise be treated as property, is an exceedingly difficult and delicate operation. Corporations may endeavor to influence the taxing boards, and the determination of the value of stocks and bonds is in many cases guesswork, or affected by the speculative fluctuations of the stock markets as evidenced in the market prices of securities. Gross earnings is not a true index of ability to pay; it discriminates against a company operating under serious physical difficulties. Measurement by net earnings, while in theory equitable, is in practice objectionable, as the term "net" has as yet no established significance. As far as companies doing an interstate business are concerned, an effort is now being made through the Interstate Commerce Commission to give greater precision to the definition and use of this term.

New York System.—As illustrative of the development of the franchise tax, the legislation of New York may be cited. In 1880 all stock companies, except manufacturing, mining, and savings banks, were taxed on the value of capital stock; in the following year an additional franchise tax was imposed on transportation and transmission companies, based on gross earnings; and in 1896 a similar tax was levied on street railways and on water, gas, heating, light and power companies, the latter companies, however, being released from the franchise tax on capital stock. In 1901 the annual franchise tax was extended to trust companies and saving banks, computed on the basis of surplus and undivided profits. This tax has also been applied to insurance companies (1881), based on gross premiums. All of the above are state taxes, assessed by the state, collected by the state, and used by the state.

In 1899, a novel modification of the franchise tax was introduced whereby local revenues may be benefited, under what is known as the "Ford special franchise tax." Special franchises are defined as rights of public serv-

ice corporations to the use of public streets. Under the law these franchises are assessed as real estate in order to prevent that deduction of debts, such as bonds, from the valuation of the corporation, which is allowable in the taxation of personal property. The valuation of these special franchises is determined by the State Board of Tax Commissioners, but the tax is collected locally and used for local purposes. Transportation and transmission companies with certain exceptions thus pay three franchise taxes; the general corporation tax based on capital stock; the "additional franchise" tax on gross earnings; and the special franchise tax.

In some states the annual license fee which corporations have to pay is called a franchise tax, as, for example, in New Jersey, where the rate is one-tenth of one per cent on capital up to $3,000,000, with decreasing rates for larger amounts.

See Assessment of Taxes; Corporations, Taxes on; Franchises, Financial Aspects of; Corporation, Public; Tax, Personal Property; Taxation, Constitutional Basis of; Taxation, Double.

References: C. C. Plehn, *Introduction to Public Finance* (3d ed., 1909), 280–284; G. S. Coleman, "Special Franchise Taxation" in National Conference on State and Local Taxation, *Proceedings*, 1907; E. R. A. Seligman, *Essays On Taxation* (1898), 180–192; H. C. Adams, *Finance* (1898), 379–381; H. R. Seager, *Introduction to Economics* (3d ed., 1905), 559–560, 568.

Davis R. Dewey.

FRANKING. The privilege enjoyed by members of Congress and officials of the United States of free transmission of mail matter, limited at present to matters relating to official business.

O. C. H.

FRANKLIN, BENJAMIN. Benjamin Franklin (1706–1790) was born at Boston, January 17, 1706. In 1723 he went to Philadelphia, where he eventually acquired a moderate fortune as printer. In 1728 he established the *Pennsylvania Gazette*, and in 1732 published the first number of *Poor Richard's Almanac*. From 1736 to 1750 he was clerk of the assembly, postmaster of Philadelphia in 1737, and from 1753 to 1774 one of the two deputy postmasters-general for North America. At the Albany congress of 1754 he submitted a plan of colonial union, which, however, was not accepted by either the colonies or the Crown.

From 1757 to 1762 he was in England, as the representative of Pennsylvania in its controversy with the Penns. Returning to Pennsylvania, he was defeated in 1764 as a candidate for the assembly, but was presently appointed colonial agent, and returned to England, where he remained until 1775. He was appointed agent for Georgia in 1768, for New Jersey in 1769, and for Massachusetts in 1770; while in the discussion which led to the Revolutionary War he was easily the leading figure on the colonial side. The affair of the Hutchinson letters, however, weakened his influence; and when, in 1774, the ministry decided to use force, he returned to America.

He was at once chosen a delegate to the Continental Congress, presided over the Pennsylvania constitutional convention of 1776, and was a member of the committee which drafted the Declaration of Independence. In September, 1776, he was appointed envoy to France, and signed the treaties of 1778 with that country, and the treaty of 1783 with Great Britain. He returned to America, was for three years president of Pennsylvania, and was an active delegate to the Federal Convention. of 1787. He died at Philadelphia, April 17,

See France, Diplomatic Relations with; Revolution, American, Significance of.

References: John Bigelow, Ed., *Benjamin Franklin* (1887–88); A. H. Smyth, Ed., *Writings of Benjamin Franklin* (1905–07); J. T. Morse, Jr., *Benjamin Franklin* (rev. ed., 1898); S. G. Fisher, *True Benjamin Franklin* (1899); John Bigelow, Ed., *Complete Works of Benjamin Franklin* (1887–88).

W. MacDonald.

FRANKLIN, SELF-CONSTITUTED STATE. A convention was held, August 23, 1784, at Jonesborough, the chief settlement of Washington County, now Tennessee, for the purpose of forming an independent state. There were in it representatives of three mountain counties—Washington, Sullivan, and Greene. These counties were within the territory which the North Carolina general assembly had, in April, 1784, ceded to Congress, but which Congress had not accepted. The convention elected John Sevier as its president. It decided to form an association of the three counties, to formulate a constitution, and petition Congress to admit it as a state. A constitutional convention was held, in November, 1784, and a provisional constitution was adopted, subject to future ratification. The provisional constitution was, however, put into immediate force, and a general assembly was elected. The assembly met early in 1785. It elected John Sevier governor, created a regular superior court and local courts, appointed judges and magistrates, levied taxes, and enacted a number of laws. A new constitutional convention met in November, 1785, adopted a permanent constitution, which was practically that of North Carolina, and adopted the name of Franklin. Congress would not recognize them as independent of North Carolina, and North Carolina would not accept their independence. The state of Franklin continued, however, to be in actual fact independent, though North Carolina provided for more efficient judicial and military government for these counties, and though the

citizens of Franklin were greatly divided among themselves. The last session of the assembly was held in September, 1787. The term of office of its members expired on March 1, 1788, and the people were not willing to elect a new assembly. There could, therefore, be no governor; and when Sevier's term expired, on March 1, 1788, the state of Franklin expired. See TENNESSEE. References: J. G. M. Ramsey, *Annals of Tennessee* (1853), 282–445; T. Roosevelt, *Winning of the West* (1894), 159–182.

C. L. R.

FRATERNAL INSURANCE. The term covers sick, death and out-of-work benefits, paid by numerous societies, lodges, orders and brotherhoods in the United States (*see* ORDERS, FRATERNAL) organized along lines similar to those of the friendly societies of Great Britain, whose insurance features are carefully supervised by the British Government. The Insurance Year Book gives for 1911 figures for 497 fraternal orders with insurance in force of the face value of $9,562,511,910, being an increase of 642 million in the past year and 72 per cent or nearly three-fourths as much as all insurance in force with old line companies. Over five million persons, not all wage-earners, were interested parties. The total expenditures of all fraternal societies for death benefits chiefly, since their foundation (1868) to 1905 has been nearly 800 million dollars, and, for sick benefits, 312 millions. Administration of these funds depends largely on unpaid help and is low in cost (8.4 per cent of receipts as compared with 18.3 per cent for ordinary insurance corporations). Fraternal societies until recently have opposed state regulation and have paid little attention to actuarial costs. Most of them are said to carry too much risk for the premiums charged. Through coöperation of the National Fraternal Congress, the Associated Fraternities of America, and the National Convention of Insurance Commissioners, a uniform bill for regulation and control of these societies has been enacted in 12 states and is likely to make further progress. See INSURANCE AND SOCIAL WELFARE; ORDERS, FRATERNAL. References: C. R. Henderson, *Industrial Insurance in the U. S.* (1909), *Statistics of Fraternal Societies* (1905).

S. McC. L.

FRAUD OF '76. The decision of the Electoral Commission of 1877 which by a partisan vote of 8 to 7 decided all cases of disputed returns in favor of Hayes, the Republican candidate—thus stigmatized by the Democratic press and in the Democratic platform of 1880. See ELECTORAL COMMISSION OF 1877.

O. C. H.

FRAUD ORDERS OF THE POSTAL SERVICE. The power of Congress and the executive to determine what matter shall be allowed to pass through the mails has repeatedly been questioned. In 1836 efforts were made to exclude abolition mail. About 1890 began the exclusion of lottery tickets from the mails; and the power of the Government to make such exclusion was affirmed by the courts. Recently the question has been raised in respect to the power which Congress has conferred upon the Postmaster General by act of Sept. 19, 1890, to prohibit by means of so-called "Fraud Orders" the use of the mails by persons believed to be conducting a fraudulent business.

This question is one of especial interest on account of the greatly increased activity of the Postmaster General in respect to the matter, who, in addition to depriving such concerns of the use of the mails, has taken energetic steps for the prosecution, criminally, of offenders, through the Department of Justice. Thus the Postmaster General in his *Annual Report* for 1910 states that: "During the last few months the principal officers of 34 corporations, companies, and firms have been placed under arrest by post-office inspectors for swindling the public by this method. In 46 additional cases individuals have been arrested for conducting similar schemes to defraud. It is estimated that the 80 important cases recently brought to a head represent swindling operations that have filched from the American people in less than a decade fully a hundred million dollars. As the work of investigation proceeded it became apparent that schemes for swindling through the mails were vastly more numerous and extensive than had been supposed. Many of these fraudulent enterprises proved to be as far-reaching in their ramifications as the postal service itself. Not only have they swindled many thousands of credulous people out of money foolishly invested, but to a large extent they have shaken confidence in legitimate enterprises. The stamping out of these frauds is therefore as important to capitalists engaged in lawful business undertakings as it is to investors. Their prevention will undoubtedly save to the American people millions of dollars annually. The department's former practice of issuing fraud orders in such cases proved ineffective. While by that method the offending concern was deprived of the use of the mails it was a simple matter for its promoters to organize under a new name and thus evade the law. In the present crusade the department's plan has been to secure the arrest, conviction, and imprisonment of the swindlers themselves. This method, which is proving to be most effective, will be continued until the fraudulent use of the mails is brought to an end."

The constitutional question here involved is not so much the power of Congress to act in the matter as its authority to delegate power to the Postmaster General to act in specific cases. This power has been definitely affirmed by the Supreme Court of the United States,

notwithstanding the fact that the action of the Postmaster General is made conclusive, no provision being made for a judicial review. This decision is in line with the other decisions of the court which take advanced ground in respect to the conclusiveness of administrative determinations.

See FRAUD, PREVENTION OF; GAMBLING; POSTAL SYSTEM OF THE UNITED STATES.

References: W. W. Willoughby, *Constitutional Law* (1910), ch. lxiv; "Fraud Orders Issued by the Post Office Authorities" in *New York Evening Post*, April 25, 1905; Edgar D. Crumpacker, "Speech on the Post-Office Appropriation Bill" in *Cong. Record*, February 19, 1907, reprinted in P. F. Reinsch, *Readings on American Federal Government* (1909).

W. F. WILLOUGHBY.

FRAUD, PREVENTION OF. Fraud is dealt with by the law either civilly by granting or withholding remedies, or criminally (as a rule only in cases specified by statute), or by preventive measures intended to render its commission more difficult or to facilitate its detection. The prevention of fraud is an exercise of the police power (*see*), and it may be exercised by the states even though interstate commerce is thereby indirectly affected; so the sale of oleomargarine (*see*) colored in imitation of butter may be prohibited, though imported from other states and sought to be sold in original packages (*see*) (Plumley *vs.* Massachusetts, 155 *U. S.* 461). Congress may legislate for the prevention of fraud so far as interstate and foreign commerce is concerned, and the Pure Food Law of 1906 serves at least in part that purpose (*see* PURE FOOD). The usual scope of the delegation of an ordinance power to cities covers protection against fraudulent practices, especially in the retail sale of merchandise and in the rendering of services which strangers are apt to call for (innkeepers, cabmen, etc.).

The principal field for legislation for the prevention of fraud is found in the business of brokers, agents and depositaries (warehouse [*see*] and commission men, auctioneers, etc.) and in the sale of commodities, especially of substitutes, imitations and adulterations, bankrupt and fire sales and sales by peddlers or other itinerant dealers.

Governmental regulation assumes the following forms: the requirement of licenses, of reports, of notices, labels and marks indicating the character and quality or quantity of merchandise; the fixing of standards of weights and measures and sometimes of the form of packages; and inspection by public officials. Inspection laws were formerly a conspicuous form of trade regulation in the states, especially with reference to goods intended for export, and being connected with burdensome fees, became so unpopular in New York that the constitution of 1846 abrogated the existing inspection offices and prohibited their future creation; the prohibition does not apply to inspection of weights and measures, or to sanitary inspection. The state inspection laws have found express recognition in the provisions of the Federal Constitution (Art. 1, Sec. x, ¶ 2) (*see* INSPECTION AS A FUNCTION OF GOVERNMENT).

The principal constitutional question that has arisen in connection with the prevention of frauds, is whether the likelihood of fraudulent practices justifies the absolute prohibition of some otherwise useful business. In connection with the oleomargarine legislation the Supreme Court of the United States answered this question in the affirmative, and the Court of Appeals of New York in the negative (127 *U. S.* 678; 99 *N. Y.* 377). But while the Supreme Court sustained the prohibition under the Fourteenth Amendment, it held the prohibition invalid for purposes of interstate commerce (171 *U. S.* 1), whereas the power of the states was conceded to exclude oleomargarine made in imitation of, and not merely as a substitute for, butter (155 *U. S.* 461). The New York view is also borne out by the fact that the policy of prohibition of oleomargarine had to be abandoned in all the states.

The history of oleomargarine legislation shows that there is a temptation to use the power to prevent fraud as a weapon to suppress competition. The tendency of legislation is certainly to multiply measures for the real or avowed purpose of protecting the public from fraud. There is, however, also, an increase in the care with which this legislation is framed and consequently in its efficacy, so particularly in the matter of legislation against adulteration. There is also some tendency to delegate the determination of difficult questions of fact in this connection to administrative authorities, a tendency most strikingly illustrated in the federal pure food law of 1906.

See BUSINESS, GOVERNMENT RESTRICTION OF; FRAUD ORDERS; POLICE POWER.

References: E. Freund, *Police Power* (1904), 272–298; W. W. Thornton, *Pure Food and Drugs* (1912).

ERNST FREUND.

FRAUDS, ELECTORAL. An election should secure expression of the free choice of each voter. Any act that interferes with or prevents the effective registration of such individual expression is an electoral fraud. The most common fraud is bribery (*see*)—the giving of money or the promise of office or other reward for voting "right." Employers of labor have often been accused of using undue influence over their employees (*see* INTIMIDATION). Laws governing registration of voters (*see*) are intended to prevent false registration, such as the placing of fictitious names on the roll, registration of non-residents or non-

citizens, etc. In crowded districts where individual voters cannot all be known to election officers, repeaters are sometimes organized to cast many votes under different names. Forged naturalization papers are issued to cover other fraudulent voting. The machines in New York and Philadelphia are understood to have many thousand illegal votes available at need. Actual voters may be shifted from a "safe" precinct to a "doubtful" one, and where a brief residence is required the letter of the law may be fulfilled. Colonization (*see*) of voters is practiced when the party has an excess of voters in one precinct and a lack in another. Sometimes Democrats from Kentucky have crossed the Ohio to assist their brethren in Indiana; and Kansas elections in the early days were decided by voters from Missouri.

Other sorts of fraud destroy the efficacy of the ballot after it has been cast. The tissue ballot used in the South after reconstruction is famous. Sometimes ballots are altered or the ballot boxes are stuffed before voting begins. False counts and returns may be made, or ballots may be rejected on trivial grounds. Defective ballots may be fraudulently printed, omitting or shifting the position of names of candidates. New political parties are extemporized in city elections, or new nominations are made to deceive certain classes of voters. Most of these acts are misdemeanors or crimes and their commission is constantly being made more difficult, if not entirely prevented, by better election laws.

But some actions falling within our definition are not illegal. Such is the organization of a third party or the nomination of a new ticket. Here also belongs the stealing of an election by the "still hunt." That is, the minority succeeds in convincing the majority party of its harmlessness and then polls a full vote at the election so late on election day that its opponents cannot get out their voters. Another device is the canard, or hoax, sprung so late in the campaign that its falsity cannot be exposed.

See Bribery; Colonization; Corrupt Practices Acts; Corruption; Intimidation; Voters, Registration of.

References: P. S. Reinsch, *Am. Legislatures* (1907), 231–257; C. A. Beard, *Am. Gov. and Politics* (1910), 671–2; J. G. Speed, "How Votes are Bought in New York City" in *Harper's Weekly*, XLIX (1905), 386–388; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. lxvii; M. Ostrogorski, *Democracy and Party System* (1910), 108, 175–179, 211, 346; J. J. McCook, "Alarming Proportion of Venal Voters" in *Forum*, XIV (1892), 1–13; "Venal Voting" in *ibid*, 159–177; A. Shaw, "National Lesson from Adams County" in *Review of Reviews*, XLIII (1911), 171–180; C. L. Jones, *Reading on Parties and Elections* (1912), 282–297.

Jesse Macy.

FRAUDS ON THE TREASURY. Robbery of the Federal Treasury by false accounts is very rare, because of the complicated system of checks and balances, and the practice of holding federal officials responsible for property and funds till they can prove the transfer to other parties or to the Government. The principal Treasury frauds, therefore, are in the collection of taxes, particularly in customs frauds, such as smuggling, undervaluation (*see*) and fraudulent claims to refunds and drawbacks (*see*). In recent years, such frauds have run up to the millions. Frauds in the internal revenue consist usually in evading the collection of the tax on the whole or a part of the output. Moonshine whiskey—that is making whiskey in small and remote unlicensed stills, is one form of fraud. Printing or stamping by manufacturers who have not paid the tax is another form. The whiskey frauds (*see*) of the seventies are a case in point. Postal service is subject to frauds in the performance of contracted service. The Star Route trials (*see*) of the early eighties showed instances of stealing amounting to one-half a million. State governments are subject to direct embezzlements by treasurers and tax collectors and to frauds in purchase and pay rolls. They usually have ineffective book keeping checks, and are much less likely then the Federal Government to follow up the wrong-doer with prosecution. The actual losses from fraud are hard to estimate. In the federal service, they are a fraction of one per cent. In some corrupt states and cities the public does not get the value of more than one dollar out of two appropriated for public purposes. **See** Appraisal of Imported Goods for Duties; Assessment of Taxes; Fines as Sources of Revenue; Forfeiture as a Source of Revenue; Public Accounts; Revenue, Internal; Revenue, Public, Collection of; Smuggling; Star Route Trials; Sugar Frauds; Tariff Administration; Whiskey Frauds on the Revenue. **Reference:** J. McDonald, *Secret of the Great Whiskey Ring* (1880).

A. B. H.

FREE DELIVERY. **See** Postal System.

FREE PORTS. At the port of Hamburg, Germany, a large area has been set aside, into which foreign materials may be imported free of duty, and, after being manufactured into finished articles, be exported to foreign markets, though the imported materials or manufactured products for the German home market pay the regular duties. Free ports have been established also at Bremen and Copenhagen. While the United States has no so-called free ports, bonded warehouses have been established into which imported goods may enter in bond and from which they may be withdrawn for shipment to bonded warehouses in other collection districts or for reëxportation to foreign

markets. Vessels with foreign cargo for re-exportation may also enter an American port under bond, without paying duties on the cargo actually reëxported in the vessels; and if the cargo is landed at the port under bond, later to be reëxported, the shipper is entitled to a drawback. In 1911 the mayor of Boston urged that such a port be established in his city. See BONDED WAREHOUSES; TARIFF ADMINISTRATION; WAREHOUSE SYSTEM. **Reference:** U. S. Treasury Dept., *Navigation Laws of the U. S.* (1911); Merchants' Assoc. of N. Y., *Report* (1914). G. G. H.

FREE SEEDS. See SEEDS, PUBLIC DISTRIBUTION OF.

FREE SHIPS MAKE FREE GOODS. This is a doctrine opposed to that of mediaeval Europe, as shown in some of the codes which set forth the principle that the liability of the goods to capture would be determined by the character of the owner of the ship. With the doctrine "free ships make free goods" some states coupled "enemy ships make enemy goods." Gradually, beginning with a treaty between France and the Porte in 1604, treaties provided that goods of friendly states on enemy vessels should be exempt from condemnation. The armed neutralities of 1780 (*see*) and 1800 announced the principle that "free ships make free goods." The principle was generally embodied in treaties negotiated by the United States before 1800.

The practice was not uniform: United States representatives often, as when Franklin wrote in 1781 and in 1783, expressed themselves in favor of exemption from capture of private property at sea. The larger European states at length agreed by the Declaration of Paris (*see*) in 1856 to the principle that, "The neutral flag covers enemy's goods, with the exception of contraband of war."

The United States, desiring still the entire exemption of all private property not contraband, did not adhere to the Declaration of Paris (*see*). It announced in 1898 that it would abide by the principles of the Declaration during the Spanish-American War.

See MARITIME WAR; MILAN DECREE; NEUTRALITY, PRINCIPLES OF; NEUTRAL TRADE; RULE OF 1756.

References: L. A. Atherly-Jones, *Commerce in War* (1907), ch. iv; J. B. Moore, *Digest of Int. Law* (1906), VII, 434–453.

GEORGE G. WILSON.

FREE SOIL PARTY. The Free Soil party, which existed from 1848 to 1854, was the second political organization formed in the hope of inducing the northern states to take action against slavery. It arose during the sectional crisis, which developed after the Mexican War over the problem of permitting or prohibiting slavery in the newly acquired territories. The contest in Congress over the "Wilmot Proviso" (*see*) caused a rapid growth of sectional feeling in the free states. Newspapers, local leaders, party conventions and non-partisan public meetings pledged themselves with rising excitement to support no candidate for the presidency in 1848 who was not opposed to the further extension of slavery. When the Democratic and Whig parties nominated Lewis Cass (*see*) and Zachary Taylor (*see*), respectively, and refused to take any ground whatever on the issue of slavery in the new territories, there sprang up an important movement for a new party in which all opposed to the extension of slavery might coöperate. At Buffalo, on August 9, 1848, a mass convention adopted a platform, organized the Free Soil party and nominated ex-President Martin Van Buren (*see*) with Charles Francis Adams (*see*), son of the late ex-President Adams. The leadership in this movement fell largely to a fraction of the New York Democratic party, which had been in opposition to Polk's administration and undoubtedly was inspired as much by a desire to defeat Cass, the regular party nominee, as to restrict the spread of slavery. So many other anti-slavery Democrats followed the lead of the New York group, that the new party had, from the start, a "Democratic" flavor which it never lost. A smaller number of anti-slavery Whigs joined the movement than would have been the case with a different presidential candidate. Practically all the Liberty party (*see*) became merged in the Free Soil movement, furnishing the radical wing to the new organization. The principles of the Free Soil party as formulated at Buffalo and repeated on later occasions were based on the same premises as those of the earlier Liberty party and the later Republican party—that slavery was a matter of state law alone and that the Federal Government should free itself of all responsibility by abolishing it in the territories and by refusing admission to slave states. "No more slave states; no slave territory" was the campaign slogan. In addition, the party declared for internal improvements, a homestead law, cheap postage and "a tariff for revenue."

In the election of 1848, the new party cast 291,263 votes and made such inroads on the Democratic ranks as to enable Taylor to carry New York, thus deciding the election. It also sent nine representatives to Congress and, by making coalitions in state legislatures, was able to send two Senators, S. P. Chase (*see*) of Ohio and Charles Sumner (*see*) of Massachusetts, who with Hale of New Hampshire formed a third-party group. After the election of 1848, most of the Democratic members of the Free Soil party returned to their original ranks and the passage of the Compromise of 1850 (*see*) seemed, by terminating the territorial crisis, to render the party superfluous. The more radical anti-slavery men persisted,

however, and kept the organization alive until in 1854 it was absorbed by the Republican party. In the campaign of 1852, John P. Hale was the candidate and drew 156,667 votes but did not affect the outcome of the election. The Free Soil party, considered as a political organization, failed to gain its ends but it played a part in Congress altogether out of proportion to its strength, owing to the ability of Chase, Sumner, Hale in the Senate, Giddings (*see*), Julian and others in the House, and it served as the training school for many of the strongest Republican leaders.

See Compromise of 1850; Democratic Party; Liberty Party; Republican Party; Slavery Controversy; Wilmot Proviso.

References: H. Wilson, *Rise and Fall of the Slave Power* (1874), II; T. C. Smith, *Liberty and Free Soil Parties in the Northwest* (1897), *Parties and Slavery* (in *American Nation*, 1906); E. L. Pierce, *Charles Sumner* (1893), III; A. B. Hart, *Salmon Portland Chase* (1899), 96–150; E. Stanwood, *Hist. of the Presidency* (1898); E. M. Shepard, *Martin Van Buren* (1899), ch. xi.

Theodore Clarke Smith.

FREE TRADE AND PROTECTION

What Free Trade Means.—Free trade means that exchange between countries shall take place without measures that cause the domestic production of articles which in the absence of restriction would be imported. It does not mean that there shall be no duties and no restrictions. The imposition of revenue duties, on articles that would not be made at home even after the duties have been imposed (on tea and coffee, for example), is not inconsistent with the principle of free trade. Neither is the imposition of duties on other articles, if an internal tax at precisely the same rate is levied on those articles when made within the country. Protection means that in consequence of duties on competing foreign products, or of other similar measures, commodities are produced within the country which would not otherwise be produced. This end might be accomplished by direct bounties to the domestic producers, or by tonnage duties on vessels bringing in foreign goods. In practice, the only method of protection followed in the United States (with no exceptions of great importance) has been that of levying duties on competing foreign products.

The Prima Facie Case in Favor of Free Trade.—The principle that trade between countries is most advantageous when unfettered is a simple corollary from the proposition that gain comes from the geographical division of labor. *Prima facie*, it is clear that productive efficiency is increased when iron is made in the Pittsburg region with cheap coal, and furniture in Michigan with cheap lumber; when cotton is raised in the South, and corn in the corn belt; and when these several regions exchange their products. Similarly, productive efficiency is increased when England digs coal and makes iron, and sends these articles to Italy, getting thence wines and oranges and lemons; likewise, if the United States digs and refines copper from her rich mines and gets in exchange from Germany potash from Germany's great deposits. Whether within a country or between countries, the geographical division of labor obviously tends to bring about cheaper and more abundant production and so to be of advantage to both of the exchanging regions.

The Principle of Comparative Costs.—In international trade one phase of the division of labor becomes conspicuous, resting on what are called "comparative costs." Though not peculiar to international trade, the principle of comparative costs is there of wide application; and it is of special importance in that trade between the United States and European countries with which the protective controversy has been chiefly concerned. Briefly stated, it is that a country (or region within a country) gains by confining itself to those industries in which it has the greater efficiency. The case of California illustrates the principle in domestic exchanges. California's soil and climate, while suited for grain raising, are peculiarly fitted for fruits; and her people found, when transportation of fruit to distant markets became possible, that, though they might with considerable efficiency give their labor and capital to grain-raising, they gained still more by devoting themselves chiefly to fruit. The United States as a whole, during the first century of national history, was under no disadvantage, as compared with European countries, in manufactures; but she had a marked advantage in agriculture. Her labor and capital were applied with more advantage in agriculture; hence manufactured articles, unless affected by heavy transportation expenses or produced under conditions exceptionally favorable, tended to be imported. The doctrine of comparative costs remains important for this country, even though in recent years our advantages in agriculture have ceased to be as marked as they formerly were. It bears on the development of the various branches of manufacture. To some manufactures our resources and industrial talents are better adapted than to others. The cause of special effectiveness among these more advantageous manufactures may be the possession of great natural

resources, such as coal and iron ore, or it may be special skill, such as Americans seem to possess where intricate machinery is used or standardized products are turned out on a large scale. In manufactures having no natural advantages, or using machinery less, or turning out specialized products in small lots, we have no special superiority, even though we are in no way inferior. Between different sorts of manufactures, just as between manufactures and agriculture, a country gains most by giving its labor and capital to those industries in which efficiency is greatest.

Such are the main principles applicable to the geographical division of labor and so to international trade. On them rests the presumption in favor of free trade. But there are considerations which, under some circumstances, rebut this presumption. In the following paragraphs the arguments most often urged in the United States in favor of protection will be taken up. Though some of the more familiar arguments are fallacious, others have weight, and at least call for discrimination before a conclusion can be reached.

Imports Are not per se a Cause of Loss.—Protection has often been advocated on the crudest mercantilist grounds (*see* ECONOMIC THEORY). Imports, it is said, take money out of the country; therefore they cause loss. Exports, on the other hand, are supposed to bring gain, because they draw money into the country. The domestic production of a commodity, after the imposition of a duty, is spoken of as if it were *per se* a good thing, since the previous importation had been a cause of loss. The country is said to "save money" by making the article at home. The constant repetition of such long-exploded fallacies (examples in plenty can be found in the *Congressional Record* during the debates on any recent tariff bill) is the result of mere ignorance of the most settled principles of economics. Imports are not ordinarily paid for by the transmission of money; they are paid for (through the mechanism of bills of exchange) by the exports. Money flows from country to country chiefly in settlement of temporary balances, which some times cause a flow one way, sometimes another. There are some really difficult and debatable questions connected with the possible continued inflow of specie into a country. But these have nothing to do with the common fallacies about "saving money" or "keeping money at home" or "spending your money at home instead of sending it abroad."

Is Domestic Industry Encouraged?—Different in form, but very similar in substance, is the argument that domestic industry is encouraged and domestic labor employed, by making at home a commodity which had before been imported. The real question is in what way domestic labor shall be employed; what kind of domestic industry shall be encouraged. Imports are paid for by exports; international trade means in essentials just this and nothing else. If imports are cut off, exports in corresponding volume must cease. The process by which the exports are made to cease is not always a simple one, but it is none the less effective. Protection means that labor and capital, which might be given to producing exportable commodities and getting imports in exchange for them, are devoted directly to producing at home the importable commodities. This shift may or may not be to the country's advantage; *prima facie* it is not; but domestic industry and domestic labor are called on in either case.

Does Protection Cause High Wages?—It is said that protection causes wages to be high, or at least keeps them high in the United States. This argument was not used in the earlier days of the American protective controversy. Until the middle of the nineteenth century higher wages usually supplied an argument to the free-traders, not to the protectionists. The free-traders maintained that high wages caused the expenses of production to be so great in manufactures that it was hopeless to try to carry them on at all. In any case, since the high wages were already there, before any system of heavy tariff duties had been adopted, it would have been absurd to say that they were the result of protection. But after a protective system had been for some time in operation, and it had been forgotten that wages were high before its adoption, the pauper labor argument became plausible. Since 1850, it has been by far the most widely-used and most effective popular argument for protection.

None the less, it is unsound. The general rate of wages in the United States is not made higher or kept higher by tariff duties. Wages are high because the general productiveness of industry is great; or, to put it in other words, because there is great general effectiveness of labor. This is the explanation of the variations in wages which appear among different countries, irrespective of their tariff policy. Wages are higher (not much higher, but clearly somewhat higher) in England, a free trade country, than in Germany, a protectionist country; they are about the same in Germany as in adjoining Holland—the one free-trade, the other protectionist; they are higher in Germany than in Russia, both protectionist. The fundamental cause of these differences, to repeat, is in the varying productiveness of labor. So far as protection turns labor into less advantageous directions—and the presumption is that it does so—it lessens productiveness. But other causes, such as natural resources, intelligence and education, effective industrial leadership, have a much larger effect on general productiveness and so on general wages. Protection is far from being the dominant factor; and so far as its operation goes, it tends by

lowering productiveness to lower general wages, not to raise them.

But in a limited set of American occupations—in those called into existence by a protective tariff—it is true that high wages cannot continue to be paid unless protection is maintained. This obvious though limited phenomenon gives color to the widespread fear of pauper labor competition. The protected industries, so far as they really need tariff support, are *ipso facto* industries in which the country has not a comparative advantage. In industries where the country does possess a comparative advantage, high wages will be paid in any case, protection or no protection; because there productiveness is great. If it is thought good for the country to possess the other industries, not so advantageously carried on, laborers in them must be paid the going higher rates of wages fixed by the generally advantageous conditions; employers cannot afford to pay such higher wages unless they can get higher prices; and they cannot get higher prices, unless protected against the competition of cheaper foreign goods. The whole subject of wages, protection, domestic industry, productiveness of labor, is closely connected with the principle of comparative costs.

The Tariff and Equalization of Cost of Production.—Closely connected, again, with the arguments that protection promotes domestic industry and keeps wages high, is the argument that the tariff should equalize cost of production. This is a modern "principle" of protection; it has been urged only since the opening of the twentieth century. Carried to its logical outcome, it would lead to the entire prohibition of international trade, by the imposition of duties sufficient to equalize all costs and to prohibit all importation. "Cost of production" means what must be paid out by the employer or capitalist; his main outlay is for wages; wages being higher in the United States, his cost is said to be greater. But his cost obviously is greater in proportion to the quantity of labor he must employ at the higher wages. The more disadvantageous an industry is—*i. e.*, the less the productiveness of labor—the more labor must be employed per unit of output, and the higher the employer's outlay. If the principle of equalization is to be consistently applied, it means that for extremely disadvantageous industries, extremely high duties are to be imposed. The principle really assumes that it is always better to produce any article at home than to import it, and that sufficient obstacles should be placed in the way of importation to make sure of domestic production.

Protection to Young Industries.—The strongest economic argument is that for protection to young or nascent industries. Its essence is that advantageous industries are not necessarily resorted to without some sort of public stimulus. The patent system rests on analogous reasoning; men are stimulated to find new ways of production by being granted a temporary privilege, restricting their competitors. Lack of experience, the risks of experiment, uncertainty as to the extent of natural resources, the inevitable weakness of beginners as compared with those long engaged in an industry—circumstances of this kind may prevent an industry from being carried on in a country, even though the permanent conditions be favorable and even though in the end it may prove able to maintain itself unaided. The following conditions for success in the application of protection to young industries have been suggested: (1) The duties should not be too high. List, one of the most conspicuous of the advocates for such protection, suggested they should not exceed 30 per cent; if higher rates are needed even at the start, the presumption is strong against eventual success. (2) After a limited period, say twenty-five or thirty years, the duties should be removed; since the object is the eventual procurement of the articles as cheaply as by importation. The only sure test of such cheapness is ability to meet foreign competition without aid. (3) Agriculture and extractive industries should not be protected; since in such industries it is generally clear enough in advance what are the possibilities at home, and since the advantages in competing countries from experience and habituation count for less. Probably it is true that agriculture offers little scope for protection to young industries. The best way of promoting good agriculture is by schools, experiment stations, and the like. But mining is not outside its scope, since it involves great risks and large investment in fixed capital. Manufacturing industries offer the most promising field of all. (4) A period of transition in industry is most favorable for this application of protection. It has been most often urged for a "young" country, *i. e.*, a country emerging from a simple agricultural stage to one more complex. Such was the United States from the close of the War of 1812 to the middle of the nineteenth century. Then the argument was urged with effect and validity. So it was in Germany during the second third of the century—after the establishment of the *Zollverein* in 1834. But any transition period, even though not in a "young" country, supplies conditions under which nascent industries may be stimulated with eventual good results. In the United States the period after the Civil War was one of extraordinary change, partly induced by the tariff itself but largely the consequence of general causes of development. The high duties of this period probably had in some cases the effect of stimulating industries that proved able to sustain themselves. The protectionists have hesitated in applying the phrase "young industries" to the giant establishments of modern times. But they maintain

that protection has had the effect of eventually lowering domestic prices—and this is in effect the young-industries argument. Though protection has in many cases caused the diversion of industry into disadvantageous channels, it has also caused it to turn to some channels that proved eventually advantageous.

The Home Market.—The young-industries argument indicates to what extent the home-market argument has validity. Strictly, the argument that protection creates a home market is as fallacious as the argument that it fosters domestic industry. No additional market is created when protection causes manufactures to arise in an agricultural country; there is simply substitution of a home market for a foreign market. The substitution is advantageous only if the substituted home market is better; and it is better only if the conditions exist for successful aid to young industries. In the United States during the period from 1815 to 1850 there seems to have been this interaction of young industries and home market. The foreign market then was shrinking or at least was failing to expand; manufactures were certain to develop sooner or later; protection probably served to facilitate the process of transition.

Political and Social Considerations. Political and social arguments are urged in favor of protection. (1) To consolidate a distracted or divided country, it may be expedient to encourage exchange within its borders rather than exchange with foreign countries. Thus in the United States after 1815, when national feeling was still undeveloped, it may have been desirable on political grounds that North should trade with South and East with West, even though economically the country as a whole might have gained more by trade with Great Britain. Similarly Germany established free trade within her borders in 1834 (by the *Zollverein*) and imposed some restrictions on trade between Germany and foreign countries; a policy which undoubtedly fostered national feeling. (2) It is urged sometimes that agriculture is an industry to be encouraged on social grounds, sometimes that manufactures are socially advantageous. In the early stages of the United States, it was often said that manufactures were of evil effect by causing crowding, bad health, employment of women and children, inequality of wealth; a simple agricultural state was the best. This was the earlier attitude of Jefferson and the Republicans (*see* DEMOCRATIC-REPUBLICAN PARTY), and then that of the Federalists (*see* FEDERALIST PARTY), when these, being opposed to embargo and war, favored shipping and agriculture. At a later stage, there was advocacy of protection on the ground that a people engaged solely in agriculture was likely to be monotonous and unprogressive. Diversified industries, it was said, conduce to intelligence, invention, stimulus to every kind of talent. This view was set forth by Hamilton in his *Report on Manufactures* (1791) and underlay much of the advocacy of protection by Henry C. Carey in the middle of the nineteenth century. During very recent years there has been a swing again toward eulogy of agriculture. The German advocates of protection say that agricultural industry is the sound core of the social structure, and that a nation predominantly manufacturing is in an evil state; they hold up Great Britain as an object lesson of a tendency to be avoided. In the United States also there is fear by many persons of the social effects of great manufactures—urban concentration, large fortunes and accentuation of inequality, a working class proletariat. These are matters on which no judgment can be pronounced on merely economic grounds. Moreover, they are matters on which the verdict on social grounds seems to be uncertain. The truth probably is that the kind of industry is less important than the kind of people. A manufacturing population may be sound and healthy; an agricultural population may be demoralized. No doubt it is true that manufactures, being conducted to most advantage on a large scale, conduce to greater inequality in the distribution of wealth. But this does not necessarily involve a down-trodden working class or a pauper proletariat. Manufactures bring social problems, but need not cause social degradation. Under present conditions in the United States, it cannot be said that political or social considerations tell unmistakably either for protection or for free trade. The decision must rest chiefly on economic grounds. These grounds are almost conclusive against a system of very high protection; and strong against a system of even moderate protection.

See BALANCE OF TRADE; COST, ECONOMIC; DUTIES, FOREIGN VALUATIONS FOR; EXCHANGE, PRINCIPLES OF; LAISSEZ FAIRE; PRODUCTION; TAXATION OF RAW MATERIAL; and under TARIFF.

References: Books arguing in the main for free trade: H. Fawcett, *Free Trade and Protection* (3d ed., 1879); C. F. Bastable, *Theory of International Trade* (4th ed., 1903); A. C. Pigou, *Protective and Preferential Duties* (1906); H. George, *Protection and Free Trade* (1886); F. W. Taussig, *Principles of Economics* (1911), Bk. V. Books arguing in the main for protection: F. List, *The National System of Political Economy* (1st German ed., 1840, translation 1856); J. P. Young, *Protection and Progress* (1900); H. M. Hoyt, *Protection vs. Free Trade* (1886). F. W. TAUSSIG.

FREE TRADE AND SAILORS' RIGHTS. A phrase used in the period preceding the War of 1812, to designate two combined claims of the United States. The first was the right of a neutral to trade with any belligerent without liability to capture by another belligerent,

except for causes recognized in international law; such as carrying contraband, and violation of a real blockade. The words "free trade" therefore have no reference to freedom of import of goods from foreign countries. "Sailors' rights" refers to the right of a citizen of the United States born within the boundaries of the United States or naturalized previous to 1783, to be free from any obligation to the British Government, particularly to be impressed to serve on an British man of war. The United States claimed the same privilege for persons naturalized after 1783, but with less insistence. See CITIZENSHIP; EXPATRIATION; NEUTRAL TRADE; NEUTRALITY, PRINCIPLES OF. Reference: J. B. Moore, *Digest of Int. Law* (1906). A. B. H.

FREEDMEN'S BUREAU. After the passage of the Thirteenth Amendment (*see*) abolishing slavery, Congress assumed temporary responsibility for the negroes freed by the war, who had hitherto been aided by voluntary philanthropic organizations. By an act of March 3, 1865, a Bureau of Refugees, Freedmen and Abandoned Lands was established, to continue one year after the close of the war. It was empowered to issue supplies to destitute freedmen and to rent them forty acres of abandoned or confiscated land with the privilege of purchase. After the surrender of the southern forces the bureau became of great importance in the conquered territory. It was clearly a necessary and proper war measure. In 1866 it was changed in character by an act of July 16, which gave it the duty of protecting, by military authority, the civil rights of the freedmen in the southern states until their constitutional relations to the Government should be restored. The bureau now became the agency by which the southern state governments, reconstructed under Lincoln and Johnson, were prevented from exercising any control over the negroes until the congressional plan of reconstruction was carried through. It was finally terminated January 1, 1869. In spite of its active efforts at philanthropic assistance, the bureau is uniformly condemned by southern authorities as having prevented a harmonious adjustment of the relations between the races after the war. See RECONSTRUCTION. References: P. S. Peirce, *The Freedmen's Bureau* (1904); W. L. Fleming, *Documentary Hist. of Reconstruction* (1906), I. ch. v; O. O. Howard, *Autobiography*, II, ch. xlvi–lxi (1907). T. C. S.

FREEDOM OF CONTRACT. See CONTRACT, FREEDOM OF; DARTMOUTH COLLEGE CASE; LABOR CONTRACTS; LABOR, HOURS OF.

FREEDOM OF SPEECH AND OF THE PRESS

Constitutional Provisions.—In the various bills of rights (*see*) in state constitutions are found provisions of the same general purport as that embodied in the Federal Constitution, in the First Amendment, that no law shall be made "abridging the freedom of speech or of the press." These guaranties do not establish any new right but simply preserve an essential feature of personal liberty long recognized in the constitution of England; although in fact liberty in speaking and publishing one's opinions is subject to fewer restrictions in the United States than even at the present time in England. The essential right guaranteed is the liberty of speaking and publishing the truth with good motives and for justifiable ends whether it respects the government or officers or individuals. In the United States it is understood to exclude censorship of the press, that is, a prior determination on public authority whether a proposed publication shall be permitted.

Legal Restrictions.—It is not intended by such constitutional provisions that freedom of speaking and publishing shall be free from responsibility and not subject to regulation. There may be both civil and criminal liability for improper speech and publication as determined by general law in the protection of property, person and reputation, and by express legislation in the exercise of the police power for the general welfare. These regulations and restrictions consist in: (1) civil liability to damages for injuries caused by slander, that is, the speaking of false and malicious words concerning another resulting in injury to his business or reputation; (2) both civil and criminal liability for libel, which is the publication by writing or printing of matter calculated to injure the business of another or his character by bringing him into ridicule, hatred or contempt, under circumstances rendering such publication unjustifiable and without lawful excuse; (3) criminal punishment for the speaking or publishing of blasphemous, obscene, indecent or scandalous matter.

Civil Liability for Slander and Libel.—Defamatory statements made maliciously or without proper occasion to the injury of another constitute the basis for recovery of damages in a civil suit. The truth of the statements may be pleaded by way of justification as a complete defence; but unless the truth is thus established, defamatory words spoken or written are presumed to be false, and they are also presumed to be malicious unless the occasion of their being spoken or published is such as to render them privileged. A privi-

leged communication is one made in good faith upon a subject matter in which the person making the communication has an interest or with reference to which he has or honestly believes he has a duty to make such communication. The privilege may be absolute, as in the proceedings of legislative bodies, the official action of executive officers, or proceedings in courts or other judicial tribunals; or it may be qualified only, where the occasion requires or is reasonably believed to require that an interested person make communication of the truth as he understands it and without malice. Qualified privilege differs from absolute privilege in this important particular, that, as to the former, absence of malice is a fact to be determined on the trial, while as to the latter the question of intent can not be inquired into, the purpose of the law being to prevent any inquiry as to motive with the view of securing perfect freedom in the discharge of legislative, executive and judicial functions.

Criminal Prosecutions.—The peace and good order of society is presumed to be imperiled by defamatory publications in the nature of libel (but not usually by oral defamation) and it is therefore regarded as criminal conduct to publish defamatory matter which is calculated to provoke another to wrath or expose him to public hatred, contempt and ridicule, as, for instance, by imputing misconduct in office or the commission of a criminal act or an act which is against morality or decency. In criminal prosecutions for defamation the truth is not a defence, for, in the absence of a proper occasion and motive, the publication even of the truth may be detrimental to the public welfare; but it is usually provided that even in criminal prosecutions the truth of the matter published may be shown.

The publication of blasphemous, obscene or immoral matter may also be the subject of criminal punishment without regard to the injury to any particular persons.

Libels on government and seditious publications were at one time, in England, the subject of criminal punishment; but in the United States the fullest discussion of public affairs is regarded as essential to the public welfare and criticisms of the government are not therefore punishable. But publications relating to conspiracies to subvert the government or tending to incite the people to treason or rebellion are not within the constitutional privilege. The sedition law passed by Congress in 1798 was, however, obnoxious to public sentiment and was soon repealed.

Functions of the Jury.—In England an anomalous practice was pursued in the courts in prosecutions for libel of submitting to the jury only the question as to the fact of publication, while the court determined the character of the publication as matter of law. This practice deprived juries of the prerogative possessed by them in ordinary criminal cases of finding a general verdict of not guilty under the law and the facts. As a result of dissatisfaction with this method of procedure, Parliament (1792) passed what is known as the Fox Libel Act by which it was provided that in prosecutions for libel the jurors should be judges of the law and the fact; and this anomalous provision has been inserted into many of our state constitutions with the result that in such prosecutions it is said that the jurors may disregard the instructions of the court as to the law. Such a constitutional provision is probably unnecessary as under the practice in this country the jury can not be deprived in any criminal case of the right to return a verdict of not guilty which can not be set aside or revised in any subsequent proceeding.

Newspaper Publications.—The publishers of newspapers are subject to the same rules as are applicable to any other publications. They are responsible in damages for untruthful and defamatory statements subject only to the privileges of purpose and occasion which are applicable in other cases. Within the general limits of privilege they have a wide latitude in the discussion of public affairs or matters of public interest.

Use of the Mails.—Under the express power given to establish post offices and post roads, Congress has authorized the Postmaster-General to exclude from the mails communications and publications detrimental to the general welfare such as letters written for fraudulent purposes, obscene literature and lottery advertisements (*see* FRAUD ORDERS; LOTTERIES). This is not an interference with freedom of the press, although the discretion thus vested in the postal department is not subject to judicial review. Similar restrictions might no doubt be imposed on interstate commerce.

References: T. M. Cooley, *Constitutional Limitations*, (7th ed., 1903), 596–658; H. C. Black, *American Constitutional Law* (3d ed., 1910), 650–668; M. L. Newell, *Libel and Slander* (2d ed., 1898); W. W. Willoughby, *Constitutional Law* (1910); E. McClain, *Constitutional Law* (2d ed., 1910), ch. xxxviii. As to federal restrictions on use of the mails, see *Ex parte Jackson* (1877), 96 *U. S.* 727; *In re* Rapier (1892), 143 *U. S.* 110. EMLIN MCCLAIN.

FREEDOM, PERSONAL. Primeval society consisted of groups, families or clans; and to this day in some ancient countries, particularly China and Japan, an individual in the eye of the law exists only as a part of some larger group which is responsible for his conduct. The theory of western Europe, as early as we have record, was of the separate freedom of the individual, or at least of the head of a family, who could be controlled in his actions only by the state. This notion of personal freedom gradually extended to adult men—children and women being until very recently, looked upon as subject to the will of the

father or husband, under protection of the state.

The main exception to personal freedom is slavery, and especially chattel slavery in which the person of the slave is looked upon as property which can be bought, sold, and mortgaged (*see* SLAVERY AS A LABOR SYSTEM). Other restrictions are serfdom; vassalage; the liability to pay taxes; the obligation of military service and obedience to military superiors; confinement of the mentally unsound; restriction on paupers; and punishment for crime by depriving persons of their liberty for a term or for life.

In actual experience, personal freedom comes down to the following privileges: (1) to be free from the constraint of other individuals (excepting parental rights); (2) to move freely from place to place and state to state (subject to regulation as to health); (3) to choose and to carry on one's calling (subject to general limitations as to professions and skilled industries, and practically subject to restrictions by trades union [*see*]); (4) to own and control one's own property always under liability for taxation, and subject to the state's eminent domain (*see*). The right to direct one's own life, subject only to restrictions laid down by previous law emanating from the community, is one of the great ideas underlying all modern government, and particularly American government.

The rights of freedom are protected by bills of rights (*see*) and other specific clauses of the state constitutions; by the principles of the common law (*see*), where the state legislation is silent; and by the guarantees of personal freedom in the Federal Constitution, such as that no one shall be deprived of liberty without due process of law; that habeas corpus shall not be suspended except in rebellion or invasion; and that neither slavery nor involuntary servitude shall exist within the United States. The principal federal statutes for the protection of freedom, are the Peonage Act of March 1, 1867, and the act to prevent kidnapping of June 23, 1874. There is need of more explicit and effective statutes for the prevention of the restraint and disregard of personal liberty.

See CITIZENSHIP; EMANCIPATION BY STATES; EMANCIPATION PROCLAMATION; INDENTURES AND INDENTED SERVANTS; PEONAGE; RIGHTS AND REMEDIES; SLAVERY AS A LABOR SYSTEM; SLAVERY CONTROVERSY; THIRTEENTH AMENDMENT.

References: T. M. Cooley, *Constitutional Limitations* (6th ed., 1890), chs. xi-xiii; J. K. Hosmer, *Anglo Saxon Freedom* (1890); Mabel Hill, *Liberty Documents* (1901); Bibliography in A. B. Hart, *Manual* (1908), §§ 12, 13.

ALBERT BUSHNELL HART.

FREEPORT DOCTRINE. The doctrine announced by Stephen A. Douglas (*see*) during his debate with Lincoln at Freeport, Illinois. "It matters not," said Douglas, "what way the Supreme Court may hereafter decide as to the abstract question whether slavery may or may not go into a territory under the Constitution; the people have the lawful means to introduce it or exclude it, as they please, for the reason that slavery cannot exist a day or an hour anywhere unless it is supported by local police regulations." He referred to "unfriendly legislation" as preventing the introduction of slavery. See POPULAR SOVEREIGNTY; REPUBLICAN PARTY; SLAVERY CONTROVERSY. **Reference:** T. C. Smith, *Parties and Slavery* (1906), 233–235. A. C. McL.

FREIGHT TRANSPORTATION, CLASSIFICATION OF. The assignment of all commodities carried by railroads to a limited number of classes, to avoid the fixing of a rate for each separate commodity. The bases of classification are many, including such considerations as weight, size, shape, risk, method of packing, and carload or less than carload shipment; but the significant and determining factor in freight classification is the value of the service and what rate the commodity, in view of all commercial conditions, can reasonably bear.

Previous to the passage of the Interstate Commerce Act in 1887, the number of classifications in existence was very large. Nearly all railroads had their own classifications applicable to local traffic, and in addition there were joint classifications with other roads. Just previous to 1887, there were 130 distinct classifications in eastern trunk line territory alone. This situation produced confusion in the minds of shippers and gave opportunity for discriminating rates.

The passage of the Interstate Commerce Act which prohibited unreasonable discriminations, the personal influence of the Commission and, above all, the realization by the railroads themselves of the necessity for reform, led to a movement toward uniformity. Early in 1887, a classification had been adopted for official classification territory, effective north of the Ohio and Potomac, and in general east of the Mississippi. During the next two years the southern classification was adopted for the region south of the Ohio and Potomac and east of the Mississippi, and the western classification for the territory west of the Mississippi. Other classifications have since been adopted which within limited areas either amend or displace the three mentioned. These local classifications include that of the Transcontinental Freight Bureau, effective on the Pacific coast, and those of a considerable number of state commissions.

Ever since 1887 there has been agitation by shippers and persistent recommendation by the commission that a uniform classification effective for the entire country be put in force.

To the accomplishment of this end the railroads have frequently set to work, only to abandon their task again and again because of the apparent impossibility of harmonizing the different sections of a country so extended and with such diverse industrial interests. The fact that railroads in different sections withdraw from the classification important commodities peculiar to these sections and grant them lower, or so-called "commodity rates," to promote their production and sale, is but an indication of the many difficulties and perplexing tangles which stand in the way of uniformity.

Until the amendment of the Interstate Commerce Act in 1910, the Commission had no specific power to prescribe classifications, although the power had been exercised under its authority to prescribe rates since the amendment of the act in 1906. For several years a committee of the carriers has been at work in an effort to devise a uniform classification. In its annual report for 1910, the Commission states that the committee has made progress, but intimates that an order compelling uniformity will be necessary unless the desired result is soon accomplished by voluntary action.

See BILL OF LADING; DISCRIMINATION; INTERSTATE COMMERCE DECISIONS.

Reference: Johnson and Huebner, *Railroad Traffic and Rates* (1911), I, ch. xvii; S. O. Dunn, *Am. Transportation Question* (1912).

FRANK HAIGH DIXON.

FRÉMONT, JOHN CHARLES. John C. Frémont (1813–1890) was born at Savannah, Ga., January 21, 1813. He excelled in mathematical studies, and became an engineer. In 1842 he undertook the first of five exploring expeditions which won for him the sobriquet of "The Pathfinder": (1) in 1842 exploring the valley of the Platte from the Missouri to the Rocky Mountains; (2) in 1843–44 he reached the lower course of the Columbia, and visited the Sacramento valley at Great Salt Lake; (3) in 1846 he was sent to California, where he took part in the Mexican War; but a quarrel with Kearny led to a courtmartial at Washington and retirement from the Army; (4) in a fourth expedition, 1848–49, he explored the upper Rio Grande and Gila rivers. (5) in 1853–54 he surveyed a line for a road to the Pacific, between the 38th and 39th parallels. In 1851 he served three weeks as United States Senator from California. His fame as an explorer led the Republicans to nominate him for President in 1856, but his electoral vote was 114 against 174 for Buchanan. In 1861 he received a commission as major-general of volunteers, and served in Missouri; but his attempted emancipation of slaves was disavowed by Lincoln, and he was relieved from command. He served again in 1864, and then resigned. From 1878 to 1881 he was governor of Arizona. He died at New York City, July 13, 1890. See REPUBLICAN PARTY. References: J. C. Frémont, *Memoirs of My Life* (1887); J. Bigelow, *Memoirs of the Life of John Charles Frémont* (1856); I. T. Martin, *Recollections of Elizabeth Benton Frémont* (1912); F. Grierson, *Valley of Shadows* (1909).

W. MACD.

FRENCH ALLIANCE (1778). See FRANCE, DIPLOMATIC RELATIONS WITH; NEUTRALITY PROCLAMATION.

FRENCH PANAMA CANAL. French interest in the waterway across the narrow lands of America goes back to Louis Napoleon's pamphlet of 1846, and was revived by De Lesseps after his successful construction of the Suez Canal. He acquired what was called the Bonaparte-Wyse concession made by Columbia in 1878. May 15, 1879, he summoned a congress of geographers in Paris which decided that the Panama route was the best one. A French company, the Compagnie Universelle du Canal Interoceanique, was thereupon formed. President Hayes took alarm and in a public message of 1880 laid down the doctrine that any future canal was "a part of our coast line," but the American people were not aroused, and were apparently willing that the French should risk their capital, leaving the ultimate question of control until it should become a live issue. Some steps were taken toward a rival Nicaragua route and an American company was chartered Feb. 20, 1889. In 1889 notwithstanding De Lesseps prediction that the canal would be finished in a few years, the company broke down and investigation showed that with an original capital of $393,505,100 including seven annual subscriptions, nearly $400,000,000 had been disposed of, yet only about one-third had actually been spent on the canal. The company was revived, however, and resumed work on the canal in 1894; but in 1899 broke down finally and helplessly. June 28, 1902, the act became a law which provided that the United States pay $40,000,000 cash to the French company for the rights, privileges and the unfinished canal. See CANAL DIPLOMACY; COLOMBIA, DIPLOMATIC RELATIONS WITH; PANAMA, REPUBLIC OF. References: *House Exec. Docs.*, 46 Cong., 2 Sess., I, No. 1 (1881), *ibid.*, 47 Cong., 2 Sess., No. 107 (1883); A. T. Mahan, *Influence of America on Sea Power, Present and Future* (1897); J. C. Rodriguez, *Panama Canal* (1885); J. H. Latané, *Am. as a World Power* (1907), ch. xii; Commission d'etude instituté par le liquidateur de la Compagnie Universelle, *Report* (1890); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 257; A. B. Hart, *Manual* (1908), § 84 (lect. 79).

A. B. H.

FRENCH SPOLIATION CLAIMS. Claims of American merchants for retaliatory depredations, including captures and confiscations by the French from 1793 up to the quasi-war of

1798, amounting to about $5,000,000 were, in the treaty of 1800, held to be reserved for further negotiation. The Senate struck out this clause from the treaty, and Napoleon therefore held that France was relieved from all responsibility. This was the virtual intention of the treaty; the abandonment of the claims was simply an offset against the release of the United States from the old treaty of alliance and commerce signed in 1778. Great pressure was put upon Congress to reimburse these claimants whose total estimate of loss was over $5,000,000. Some of the bills for that purpose reached the President and were vetoed. In 1885, the matter was referred by Congress to the Court of Claims which brought in awards of about $4,800,000, most of which was passed to the representatives of the old insurance companies.

A second set of spoliation claims of American citizens against France, amounting to $5,000,000 for special claim, was assumed by the United States and provided for to the amount of 20,000,000 francs out of the purchase money for Louisiana (*see* LOUISIANA ANNEXATION).

A third group of spoliation claims arose from 1800 to 1812, amounting to about 25,000,000 francs, which was eventually settled and paid in 1836.

See CLAIMS, INTERNATIONAL; COURT OF CLAIMS; FRANCE, DIPLOMATIC RELATIONS WITH; LOUISIANA ANNEXATION; MARITIME WAR; NEUTRAL TRADE.

References: T. H. Benton, *Thirty Years' View* (1854), I, 487–521; J. B. Moore, *Digest of Int. Law* (1906), V, 606–614, 1022–1026, *Int. Arbitrations*, V, 4399–4446; D. Webster, *Works* (1853), IV, 152–178; E. C. Mason, *Veto Power* (1891), 83, 84; Edward Everett, "Claims for French Spoliation" in *No. Am. Rev.*, XXII (1824), 136–162; G. A. King, "French Spoliation Claims" in *Am. Jour. of Int. Law*, VI (1912) 629.

ALBERT BUSHNELL HART.

FRENEAU, PHILIP. Philip Freneau (1752–1832) was born at New York City, January 2, 1752. He made a voyage to the West Indies in 1780, and was taken prisoner by the British on his return: his experiences are described in his poem *The British Prison-Ship*, published in 1781. Subsequently he wrote patriotic articles and verses for the *Freeman's Journal* of Philadelphia. In 1790 he became editor of the New York *Daily Advertiser*. His abilities attracted the attention of Jefferson, who in 1791 gave him a position as translator in the Department of State. While holding this position he also edited the *National Gazette*, and in its columns made frequent violent attacks upon Hamilton and the Federalists. Hamilton accused Jefferson of approving, if not actually prompting, these attacks, but Jefferson, in a letter to Washington, denied responsibility for Freneau's course as editor. The connection with the *National Gazette* continued for two years, and thereafter Freneau did nothing of political importance. He died near Freehold, N. J., December 18, 1832. See ANTI-FEDERALIST. **References:** F. L. Pattee, *Poems of Philip Freneau* (1902–3); S. E. Forman, *Pol. Activities of Philip Freneau* (1902); J. S. Bassett, *Federalist System* (1906), 46–50.

W. MACD.

FRIES' REBELLION. A name given to the uprising in eastern Pennsylvania, March 1799, under the leadership of John Fries in protest against the direct tax on houses levied by the preceding Federalist Congress. The harshness with which the uprising was put down made for Republican success in 1800. O. C. H.

FRONTIER IN AMERICAN DEVELOPMENT

Frontier Line.—With the ever repeated entrance of the pioneers into successive areas of wilderness, American society has been continually beginning over again at the outer edge of settlement, from the earliest colonial days to our own time. This has been the fundamental characteristic of American development; for the western advance has profoundly influenced the older sections, economically, politically, and socially.

The American frontier has been unlike the fortified boundary line of many European frontiers; it has been the temporary boundary of an expanding society at the edge of substantially free lands. The United States Census Office in its maps of density of settlement at each decade from 1790 to 1890 laid down as the "frontier line," the boundary, roughly speaking, of the population of two or more to the square mile. For the colonial era, Professor Edward Channing, in his *History of the United States*, supplies maps showing approximately the settled area in 1660, 1700, and 1760. In 1890 the superintendent of the census announced that "at present the unsettled area has been so broken into by isolated bodies of settlement that there can hardly be said to be a frontier line. In the discussion of its extent, its westward movement, etc., it cannot, therefore, any longer have a place in the census reports."

The frontier line depicted on these maps is irregular, sometimes bounding peninsulas and islands of exceptionally advanced settlement as on the lower Missouri, sometimes restrained by wilderness areas intruding like bays or is-

lands in the settled area, as the Adirondacks. These irregularities illustrate the fact that the advance of the frontier has been retarded by various factors such as physiographic obstacles, native tribes and, in a slight degree, by the opposing colonists of other nations; while, on the other hand it has been advanced by the attraction of exceptional natural resources, lines of least resistance, such as valleys and areas unheld by the Indians, as well as by the inherent expansive energy of the people behind the frontier.

This expansive energy depends partly upon the adaptability of the economic life of the people to frontier conditions, partly upon the demand of an increasing population for cheaper lands, partly upon the demand for special natural resources such as mines, and partly upon the optimistic and adventurous spirit of the different peoples who settled various parts of the American frontiers. As the United States grew in resources and power the national forces precipitated themselves upon the remaining wilderness in large masses and without the preliminary skirmish lines of primitive conditions, and thus created a new type of frontier.

Frontier Characteristics.—In popular speech the American frontier is not a line, but that zone of settlement nearest the wilderness, wherein society and government are loosely or incompletely organized. Here individualism and economic self-sufficiency are in evidence. Extra-legal associations such as regulators, squatter associations, claim associations (*see*), vigilance committees and mining camp tribunals, mark spontaneous efforts of the frontiersmen to supply institutions adapted to their needs in advance of the coming of formal legal institutions, or to supplant them when they have broken down or have fallen into the hands of disorderly elements. In the American advance of settlement formal authority has arrived more tardily on the frontier than has been the case in European and Canadian advance into new countries. Lack of restraint, indifference to the customs of older societies, acceptation of the "personality of law," and the adoption of the most direct and effective course to achieve the desired object, regardless of formalities, have been characteristic of the frontier and have survived in western regions after the frontier has passed on. This frontier tendency has been emphasized by the need of dealing with the adventurous and sometimes criminal elements which escaped from the restraints of more settled society. The blood feud, the reliance of the frontiersmen upon their own weapons for defence, the speculative and reckless spirit indicated in an exaggerated form by the gambling houses, the "wide-open town," the bandit and the "bad man," have marked the American frontier at times, but have been least in evidence in the zone of the agricultural frontiersman.

Frontier Zones.—There has been a series of military frontiers, palisaded forts, and then United States army posts in proximity to the Indian country; but more significant in American growth, is the aspect of the frontier as the index line of social development. The advance of settlement has occurred in a series of waves, often roughly corresponding to the stages of industrial society. The census maps of density of population at successive decades, exhibit in different shades six groups of density. "The first group, that containing less than two inhabitants to the square mile is regarded as unsettled area, and represents a petty population made up of hunters, trappers, fishermen, lumbermen and miners, scattered over wide stretches of country." Exploiting natural resources by the simplest means, this wave of advance naturally preceded the others far into the Indian country. The second group (2 to 6 inhabitants to the square mile) roughly represents the area of the pioneer farmer and rancher. The third group (6 to 18 inhabitants) is characterized by more advanced farming methods, and the fourth group (18 to 45 inhabitants) "represents a population essentially devoted to agriculture, but in which manufactures and commerce have commenced to make some progress. The fifth and sixth groups represent a population which relatively to agriculture is largely engaged in manufacture and commerce and in both of which a goodly proportion of people live in small towns or cities." (*See* POPULATION OF THE UNITED STATES.)

There is, thus, the frontier of the Indian trader, of the rancher, the miner, the pioneer farmer, the more advanced farmer, the town and small city manufacturer, and of the large city and great manufacturing centers. Speaking generally, each of these frontiers has been successively advanced to the ground formerly occupied by its predecessor, and American economic, political and social life, has been chiefly the resultant of these successive changes. Political leaders have often adjusted their policy to the transformation of their section.

Successive Changes.—As each of these frontiers of social change has advanced into new areas, with the spread of settlement, it has retained many of the characteristics of its former area, but has undergone modifications due to the different physical conditions of the new location, such as the change to a prairie area from a forest area; or to the general changes incident to the different period. New economic and social institutions have been called out by new conditions, or old institutions have been shaped to new uses. The frontier zone has been a region of experiment and adaptation, and thus a creative influence in American development. Along the changing frontier, custom could not crystallize, society could not stratify, and the existence of the frontier operated to restrain these tendencies

in the east. American democracy was born on the frontier and received its initial strength from the frontier states. At the edge of practically "free land" the field of opportunity was open. The full meaning of this in American life became more apparent as the frontier and free lands drew to their close.

Significance in Eighteenth Century.—In the early part of the seventeenth century the frontier lay along the settled portions of the Atlantic coast. It was, in a sense, the frontier of Europe, where old world institutions were undergoing adjustment to the colonial wilderness. By the second half of the eighteenth century the frontier had reached the Berkshire hills of western New England, extended up the Mohawk Valley, in New York, and along the Great Valley of Pennsylvania, and its extension in Virginia lay as far west as the Piedmont, or upland, region of the South beyond the falls of the rivers. This frontier was modified by the presence of non-English stocks, especially Germans and Scotch-Irish, and by an increased independence not only from Europe, but also from tidewater settlements. In the course of the French and Indian War and the Revolution, the frontier crossed the Alleghanies. This frontier was that of the backwoods Indian fighters, devoted to local self-government and democracy. In the period when the new Constitution was framed it aided in shaping liberal territorial relations and equality of statehood for the western communities.

Early Nineteenth Century.—By the beginning of the nineteenth century the frontier extended along the tributaries of the Ohio, bounding a peninsula of settlement thrust forward beyond the Alleghanies much as the frontier had bounded the Mohawk Valley in the second half of the eighteenth century. Lying beyond the Alleghanies, it was increasingly self-assertive, and its economic interests led it to resist the control which Spain exercised over the navigation of the Mississippi, the only exit for its crops, and also to resist the preponderance exerted by England, from her posts on the Great Lakes, over the Indians of the Northwest. The frontier became a powerful influence in foreign relations. The purchase of Louisiana and the War of 1812 with England definitely insured to the frontier new fields for advance north and south as well as to the west.

In National Politics.—Having, by 1820, passed from the backwoods stage of self-contained economic life, these trans-Alleghany settlements now pressed for an outlet to the east by way of roads and canals across the Alleghanies. At the same time the advancing frontier revealed to eastern cities the commercial advantage of the internal trade of the rising empire of the West as a substitute for the waning foreign commerce. The home market arguments for a protective tariff, as well as internal improvement projects were vigorously urged. The public lands along the frontier zone became the subject of rival legislative proposals of leading American statesmen, who now realized more fully their far-reaching influence upon problems of sectional rivalry, as well as upon the labor supply, wages and land values in the East. These economic influences of the frontier affected the whole structure of American industrial society. Thus a series of congressional legislative acts, increasing the power of the Federal Government, was undertaken; the frontier revealed its nationalizing influence in the field of domestic policy, as in earlier periods it had been a nationalizing force in calling out common action in the field of diplomacy and defence.

Sectional Effects.—On the other hand, as the settlements extended up the Missouri and into the forests of the Northwest and the cotton fields of the Southwest, the frontier advance gave new emphasis to the sectional differences in the matter of slavery. The Missouri Compromise illustrates the problem presented by slavery as a factor in frontier extension, demanding national decision of rival interests in the expanding sections.

The frontier as a debtor area had been influential upon currency questions from colonial days. The rural democracy of the frontier zone objected to the national bank and demanded an expansion of credit. Jacksonian democracy represented the growing demand for popular participation in government on the part of the frontier and the regions whose ideas were shaped by recent frontier experiences. Jackson embodied the nationalism, the democracy, the opposition to the control of capital, the directness and the vigor of the frontier.

Effect on Diplomacy.—By 1840 the frontier had reached the meridian of the great bend of the Missouri and settlement was banking up against the great plains as before it had against the Alleghanies. In the course of the next decade the frontier was lodged on the Pacific coast, whither fur traders and missionaries had preceded it. The diplomatic relations of this period with reference to Texas, Oregon and California were called out by the advancing frontier, and the annexations were made possible by the energy of frontier advance. As previously, the relation of slavery to this moving frontier was a factor of primary importance, and it gave tone to the political contests from that time to the Civil War.

Effect on Adventurous Characters.—The mining society in California exhibited typical characteristics of the frontier remote from control of the government amid the excitement of gold discovery. The opportunity of sudden riches acquired under the frontier freedom of individual competition introduced an element into American life which was persistent and influential. This factor received new emphasis with the opening of the gold and silver fields of the Rocky Mountains in the period

of the Civil War where new mining rushes repeated the frontier experiences. Thus the frontier exhibited an eastward as well as a westward movement.

In this period also the Indian frontier acquired new importance, and the regular Army succeeded the frontier militia as the defenders of the settlers. This illustrated the growing national energy applied to the frontier, and the same energy was exhibited in the demand for railroad construction across the great plains as earlier across the Alleghanies.

Effect on Political Organizations.—Between 1870 and 1890 this intervening wilderness was broken down by the formation of various new frontiers. The farmer's frontier advanced rapidly across the trans-Mississippi prairies until it met the check of the arid lands. As the Indians were conquered and forced into reservations on either side of the newly opened continental railroad, the ranching frontier extended along the great plains. By 1884 the frontier barrier of the great plains and the Rockies had been pierced by the Southern Pacific Railroad. An era of exceptionally low prices for crops and cattle followed. The farmers' movement in the Granger agitation (*see* GRANGER CASES), the Greenback (*see*) contest, and the free silver Populist uprising of the nineties (*see* SILVER COINAGE CONTROVERSY), were indicative of the recurrence of the influence of the frontier as a debtor region, as well as the over-confidence and over-production which the rapid frontier advance induced. By about 1890, when the frontier line was proclaimed at an end, a group of new frontier states in proximity to northern railroads (North Dakota, South Dakota, Montana, Washington, Idaho, and Wyoming) had been admitted to the Union, and thereby new frontier political influence was created, as had been the case when the earlier frontier states had been admitted between 1816 and 1821. The revolutionizing of the Democratic party under Mr. Bryan in the election of 1896 was partly due to this influence and is comparable to the wave of Jacksonian democracy which rose in the thirties.

Economic Combinations.—In the more recent period the national development has been deeply influenced by the efforts to adjust the nation to the conditions imposed by the gradual extinction of the frontier. The historic competitive individualism of the frontier was subordinated to control by combinations of capital, on the one hand, and to increasing reliance by the former frontier areas upon national legislation and popular political organization, on the other, to preserve the old democratic ideals of equality of opportunity. The political "insurgency" of the West and the strength of the Progressive movement in the same regions, with its programme of direct popular government and political control of economic life, bear witness to the changing spirit which appeared as the frontier era closed.

Conservation.—The reclamation of the arid frontier and the conservation of natural resources also became significant as the frontier era terminated. Labor no longer found its safety in the existence of the free lands of the frontier, and sought increasingly to advance its interests by national organization. In the same period the old expansive tendency of American life which had been exhibited in the advance of the frontier was continued in the extension of settlement and investment of American capital across the borders into Canada and Mexico, and was given new expression by the expansion of the nation over-seas in the Spanish-American War, when it became a world power with distant dependencies.

American character has been deeply affected by frontier experiences. Individualism, an original humor, indifference to old world lessons, optimistic faith and a bold and forceful recklessness in the presence of its vast opportunities, characterized the nation. Creative idealism and largeness of design went side by side with emphasis upon material development. These traits found expression in literature and politics as well as in economic and social life. With the passing of the frontier and its free opportunities, the United States seems to exhibit less assurance in respect to the excellence of its institutions, a more critical and discontented spirit, a greater attention to statistics, to the collective problems of society and to the experience of other nations.

See BOUNDARIES, INTERIOR; INDIAN POLICY OF THE UNITED STATES; IRRIGATION AND IRRIGATED LANDS; POPULATION OF THE UNITED STATES; PUBLIC LANDS AND PUBLIC LAND POLICY; PHYSICS AND POLITICS; PHYSIOGRAPHY OF NORTH AMERICA; TERRITORIES, ACQUIRED, STATUS OF; TERRITORIES OF THE UNITED STATES, ORGANIZED; WEST AS A FACTOR IN AMERICAN POLITICS.

References: F. J. Turner, "Significance of the Frontier" in Am. Hist. Assoc., *Report*, 1893, 199, reprinted in Bullock, *Readings in Economics* (1907), "Problem of the West" in *Atlantic Monthly*, LXXVIII, 289, "Contributions of the West to American Democracy" in *ibid*, XCI, 83; F. L. Paxson, *Last American Frontier* (1910), ch. i; E. C. Semple, *Influences of Geographic Environment* (1911), ch. vii, and index "Boundaries"; E. L. Godkin, *Problems of Modern Democracy* (1896), ch. i; J. E. Cutler, *Lynch Law* (1905); H. Croly, *Promise of American Life* (1910), ch. i; A. B. Hart, *National Ideals Historically Traced* (1907), chs. i, iii; K. Coman, *Econ. Beginnings of the Far West* (1913).

FREDERICK JACKSON TURNER.

FUGITIVE SLAVES. The problem of recapturing fugitive slaves who had escaped into another jurisdiction was a permanent accompaniment of the institution of slavery. Articles providing for the rendition of fugitives

were included in the New England Confederation of 1643, the Articles of Confederation of 1781, and the Northwest Ordinance of 1787. The Federal Constitution (Art. IV, Sec. ii) guaranteed the return of fugitives from labor, and Congress, in 1793, passed an act prescribing the procedure to be used in reclaiming them. After 1800 slavery became practically extinct in the northern states and a sentiment sprang up adverse to returning such fugitives from service. With the rise of the anti-slavery movement (*see* ABOLITIONISTS; SLAVERY CONTROVERSY), there developed a systematic custom of assisting runaway slaves by sending them by night from one sympathizer to another. This was known as " the underground railroad" and was responsible for the loss of thousands of dollars worth of slaves annually to the northern slave states. As anti-slavery sentiment gained control of northern legislatures, many states passed "personal liberty laws" (*see*) intended to prevent kidnapping of free negroes and also to hinder the recapture of genuine fugitives. In 1850, in response to bitter complaints from the slave states, Congress passed a more stringent fugitive slave law which placed the authority for rendition wholly in the hands of federal commissioners and left the proceedings purely *ex parte* (*see* COMPROMISE OF 1850). In spite of this, the northern sympathy for fugitives was so strong that in the years before 1860 the new law was hardly enforceable in many localities. This northern refusal to carry out one of the express provisions of the Constitution was one of the leading causes assigned in 1861 for secession. The law was repealed in 1864. **See** SLAVERY CONTROVERSY. **References:** M. G. McDougall, *Fugitive Slaves* (1891); W. H. Siebert, *The Underground Railroad* (1898); J. C. Hurd, *Law of Freedom and Bondage* (1858–1862); T. C. Smith, *Parties and Slavery* (1906), index.

T. C. S.

FUGITIVES FROM JUSTICE. A fugitive from justice within the meaning of the Federal Constitution (Art. V, Sec. ii, ¶ 2), providing for interstate extradition of criminals, is any one who "having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, . . . has left its jurisdiction and is found within the territory of another." Roberts *vs.* Reilly, 116 *U. S.* 80. **See** EXTRADITION, INTERSTATE.

W. W. W.

FUGITIVES FROM SERVICE. The continuance of slavery always depended upon some legal and effective machinery for recovering runaway slaves. The English colonies had internal laws upon this point, and also intercolonial agreements (*see* COLONIAL INTERNATIONAL RELATIONS). The first federal treaty with the Cherokees in 1778 provided for the return of fugitives, as did also the Ordinance of 1787; and the Federal Constitution explicitly provides that "no person held to service or labor in one state" shall, if he escapes into another, be there set free by the law in that other community (Art. IV, Sec. ii, ¶ 3).

The phrase "fugitive from labor" in its early use included indentured servants, and apprentices, but in practice was applied chiefly to fugitive slaves. So long as slavery continued in several northern communities the provision made little trouble; but after the growth of organized abolition (*see*) agitation, public sentiment in many of the northern states was hostile to the recovery of fugitive slaves. Some acute difficulties occurred over the question of what constituted escaping into a free state. The fugitive slave law (*see*) was supplemented by some state acts but fell into disuse during the Civil War.

See ABOLITIONISTS; COMPROMISE OF 1850; SLAVERY AS AN ECONOMIC SYSTEM; SLAVERY CONTROVERSY.

References: M. G. McDougall, *Fugitive Slaves* (1891); W. H. Siebert, *Underground Railroad* (1898); A. B. Hart, *Slavery and Abolition* (1906), ch. xix; William Still, *Underground Railroad* (rev. ed., 1883); Levi Coffin, *Reminiscences* (1876); S. G. Howe, *Refugees from Slavery in Canada West* (1860).

ALBERT BUSHNELL HART.

FULLER, MELVILLE WESTON. Melville W. Fuller (1833–1910), Chief Justice of the United States Supreme Court, was born at Augusta, Maine, February 11, 1833. In 1855 he was admitted to the bar, and for a time was associate editor of *The Age*, a Democratic paper published at Augusta. He was also president of the common council and city solicitor. In 1856 he removed to Chicago, and practiced law there until 1888. He was a member of the Illinois constitutional convention of 1862, and from 1863 to 1865 served in the lower house of the legislature. In 1864, 1872, 1876, and 1880 he was a delegate to the Democratic national convention. His appointment as Chief Justice was dated April 30, 1888, but the appointment was not confirmed until July 20, and he did not take the oath of office until October 8. In 1899 he was chosen as one of the arbitrators of the boundary dispute between Venezuela and British Guiana; and he was also a member of the premanent court of arbitration at the Hague. His influence upon the court, in a period of fundamental economic and political change, was conservative and even reactionary. He died at Sorrento, Maine, July 4, 1910. **See** CHIEF JUSTICES. **Reference:** C. D. Walcott, "Melville W. Fuller" in Smithsonian Institution, *Annual Report* (1910).

W. MACD.

FUNDAMENTAL LAW. **See** LAW, FUNDAMENTAL.

FUR SEAL CONTROVERSY. A difficulty arising out of the claim of the United States to the exclusive right to take fur bearing animals in the eastern half of Bering Sea. The controversy practically begins with a memorandum claiming the Alaskan waters, written by acting Secretary French, March 12, 1881. In 1886 the matter was brought to a point by the capture of several Canadian sealers engaged in taking seals in these waters, a capture confirmed by a decision of Judge Dawson. From 1888 to 1893 there were negotiations between the two countries, culminating in the arbitration of 1893, which found against the contention of the United States but recognized the desirability of protecting the seals by international agreement. See ALASKA BOUNDARY CONTROVERSY; BOUNDARIES, EXTERIOR; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; FISHERIES, INTERNATIONAL, RELATION OF GOVERNMENT TO; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; WATER BOUNDARIES AND JURISDICTION. References: J. B. Moore, *Digest of Int. Law* (1906); *Am. Hist. Leaflets*, No. 6 (1892). A. B. H.

FUSION. Fusion is the combination of two or more parties or factions to defeat a stronger one. Such coalition is more or less a temporary agreement for a specific purpose and is usually confined to a particular election. The chief parties often take warning from the manifestations of disaffection within their ranks, as when a faction withdraws to vote with an opposing partry or to aid in forming a new party, or when individuals vote independently against their party; and tend to reconsider the party principles, to restate the party doctrines, and to reshape the issues of the day in a manner to win back the disaffected or to prevent secession.

Many instances of fusion occur in American political history. In the presidential election of 1860 the two wings of the Democratic party had each a ticket in the field. Both wings were desirous of defeating Lincoln, and to that end it was arranged in certain states to present a fusion electoral ticket with names chosen partly from one faction and partly from the other. A fusion ticket made up of three Democrats and four Greenbackers was voted for in Maine in 1880, a "straight" Greenback ticket being also in the field. In Virginia, the same year, Democrats and Readjusters both voted for the regular Democratic electors. Again, in 1896 Populists and Democrats combined and put out fusion tickets in twenty-six states, hoping to defeat McKinley. In some states Democrats fused with Populists, in others with "Silver" Republicans.

See PARTY, PLACE AND SIGNIFICANCE OF.

References: E. Stanwood, *Hist. of the Presidency* (1898), 397, 515, 564; T. H. McKee, *National Conventions and Platforms* (1901), 198, 326; W. A. Peffer, "The Passing of the People's Party" in *North Am. Review*, CLXVI (1898), 12–23; E. P. Clark, "Populism in the Saddle" in *Nation*, LXX (1900), 372. JESSE MACY.

FUTURES, DEALING IN. A mechanism of an exchange (*see*). To sell (or buy) a future is to contract to deliver (or accept) at a stipulated time subsequent to the making of the contract, a stipulated quantity of a commodity (or stock or bond) at a stipulated price. The seller need not have the commodity in his possession; in fact the term has come to be associated with such speculative transactions. The seller contracts, believing that prices will fall and that he can buy for delivery at a profit; the buyer contracts, believing that prices will rise and that he can sell at a profit. Such organized speculation performs two important economic functions: (1) it serves society in general by its directive influence on prices through equalization in time; (2) it serves trade as such by its risk-bearing functions; *e. g.*, it enables a manufacturer who takes orders for manufacture and delivery at some future time and intends to buy his materials at the time of manufacture, to protect himself from loss through a rise in the price of materials, by buying a future. For a fee the risk is assumed by dealers in futures. See EXCHANGES, BUSINESS; GAMBLING; SECURITIES, FEDERAL COMMISSION ON; STOCKS AND BONDS. References: H. C. Emery, *Speculation on the Stock and Produce Exchanges* (1896), 96–170; *Am. Year Book, 1910*, and year by year.

H. S. P.

G

GADSDEN PURCHASE. When the commissioners of Mexico and the United States attempted to mark the boundary line determined by the treaty of Guadalupe Hidalgo, 1848, they found it vaguely described, and the map given them as an official guide to be geographically incorrect. This caused a dispute over the ownership of the Mesilla Valley, south of the Gila River, which was keenly desired by the United States since it had been discovered to be the only practicable southern route for a railroad to the Pacific. Another cause of friction was the eleventh article of the treaty of 1848, which bound the United States to prevent its Indian tribes from making depredations into Mexico. This provision had been almost impossible to carry out; as a consequence much damage had been inflicted upon Mexicans for which their Government demanded compensation.

To settle both disputes, James Gadsden, the American minister to Mexico, was commissioned to negotiate with that country. He signed a treaty Dec. 30, 1853, which, after being amended in important respects by the Senate of the United States, provided for the payment, by the United States, of $10,000,000; the cession by Mexico of 45,535 square miles, which now form the southern part of New Mexico and Arizona; the abrogation of the eleventh article of the treaty of 1848; and the release of the United States from all claims for its non-fulfillment. As originally drawn the treaty included the cession of a much larger territory and the payment by the United States of $20,000,000. Unfortunately some suspicion of bribery and jobbery attaches to the negotiations and the payment of the purchase money. Mexico accepted the Senate amendments; Congress made the necessary appropriations; and ratifications were exchanged, June 30, 1854.

See BOUNDARIES OF THE UNITED STATES, HISTORY OF; CALIFORNIA AND NEW MEXICO, ANNEXATION OF; GUADALUPE HIDALGO, TREATY OF; MEXICO, DIPLOMATIC RELATIONS WITH; PACIFIC RAILROADS.

References: E. J. Carpenter, *Am. Advance* (1903), ch. vii; J. B. Moore, *Digest of Int. Law*, I (1906), 460–462; W. M. Malloy, *Treaties and Conventions, 1776–1909* (1910), 1121–1125. GEORGE H. BLAKESLEE.

GAG LAWS. The gag laws, or gag resolutions, were attempts to prevent the discussion of the slavery question in Congress. Many felt that anti-slavery agitation would cause the dissolution of the Union. May 26, 1836, the House adopted a rule to the effect that all petitions relating to slavery, without being read, should be laid on the table. Session after session for several years the gag laws were reënacted. The opposition insisted that the right to petition given by the First Amendment, includes the right to have the petition heard. These rules were finally voted down in 1844. See SLAVERY CONTROVERSY. **References:** A. B. Hart, *Slavery and Abolition* (1907), 259–271; J. B. McMaster, *Hist. of the People of the U. S.*, VI (1906), *passim;* J. F. Morse, *John Quincy Adams* (1887), 306–308. T. N. H.

GAG RESOLUTIONS. The term is applied to efforts by rules to put a stop to discussion in deliberative bodies. The best known illustration is the struggle in the federal House of Representatives from 1835 to 1844, to shut out petitions regarding slavery. John Quincy Adams vigorously opposed these resolutions. The same object has been obtained in legislative bodies by the autocratic power of a presiding officer or a committee on rules. See PETITION, RIGHT OF; RULES; SLAVERY CONTROVERSY. **References:** A. B. Hart, *Actual Government* (1908), 112, 116, *Slavery and Abolition* (1908), ch. xviii; John Quincy Adams, *Memoirs* (1877). T. N. H.

GALLATIN, ALBERT. Albert Gallatin (1761–1849) was born at Geneva, Switzerland, January 29, 1761. He came to the United States in 1780, was an instructor at Harvard College, and in 1784 settled in Fayette County, Pa., then claimed by Virginia, where he had taken up land. In the discussions over the ratification of the Federal Constitution he allied himself with the Anti-Federalists, was a member of the Pennsylvania constitutional convention of 1789–90, and from 1790 to 1792 sat in the state house of representatives. In 1793 he was elected United States Senator, but was unseated after a brief service on the ground of ineligibility. He was involved in the preliminaries of the Whiskey Insurrection of 1794, though opposed to violence, and incurred the enmity of the Federalists on that account. He returned to Congress in 1795, and until 1801 was the recognized leader of the Republicans in the House. In 1801 he was appointed Secretary of the Treasury, in which office he took a rank only second to that of

Hamilton as a public financier. He held the office until 1814, but in 1813 was appointed special commissioner to negotiate peace with Great Britain, and signed the treaty of Ghent in 1814. From 1816 to 1823 he was minister to France. He was the caucus nominee for the vice-presidency in 1824, but withdrew because of doubts regarding his eligibility. In 1826–27 he was minister to Great Britain, He died at Astoria, N. Y., August 12, 1849. See Democratic-Republican Party; Great Britain, Diplomatic Relations with; Internal Improvements; Treasury Department. References: H. Adams, Ed., *Writings of Albert Gallatin* (1879), *Life of Albert Gallatin* (1879); J. A. Steven, *Albert Gallatin* (rev. ed., 1898). W. MacD.

GALVESTON. Galveston dates its corporate existence from 1839, but permanent settlement of the island began two years earlier. Its population was 5,513 in 1850, 37,789 in 1900, and 36,981 in 1910. September 8, 1900, a storm laid in ruins a large part of the city and destroyed one-seventh of its population From the crisis which followed the present charter of the city was evolved. This vests the government in a board of five officials, a mayor-president and four commissioners, elected at large for a term of two years. There is no recall (*see*), but officers are removable by legal process. The administration is divided into departments of: (1) finance and revenue; (2) police and fire; (3) streets and public property; (4) waterworks and sewerage; and immediately after election the board, by majority vote, assigns a department to each commissioner. Regular public meetings are held weekly, and special ones as often as necessary. The mayor-president presides, votes, has advisory power, and is the chief executive; but he can not interfere of his own authority in the department of a commissioner, and he has no veto. Each commissioner is responsible for the management of his department. He nominates its employees, audits its accounts, and prepares its budget; but appointments are made by majority vote of the board, accounts are not paid without the approval of two commissioners, and contracts requiring the expenditure of more than $500 must be advertised and awarded to the lowest responsible bidder. The general annual budget, formed by the board, must not exceed the revenue, and contractors who furnish labor and material to the city are enjoined by the charter to expect payment solely from the income of the current year. Public franchises can not be granted until their terms have been duly advertised, are limited to fifty years, and the city reserves supervisory power with authority to revoke for cause. Thus, while responsibility is centralized, sufficient checks are imposed upon the commissioners to make peculation difficult and sure of detection. The success of the Galveston government can be partially seen from a financial statement. When it went into operation the debt of the city was $3,000,000, bonds have since been issued for $2,775,000, and more than $1,000,000 has been expended from the general revenue for public improvements, but the present debt is less than $4,500,000. The direct, expeditious methods of a successful financial corporation are employed in the management of the city's business, and the result is similar. Since 1901 the city has had three mayor-presidents, one of whom was removed by death, but the same four commissioners have been continuously re-elected. There is a healthy opposition to the administration, however, and the popular interest in public affairs is evident from the fact that seventy-seven per cent of the qualified voters voted in the regular election in May, 1911. See Commission System of City Government. References: *Charter of the City of Galveston* (1903); E. R. Cheeseborough, *Galveston's Commission Form of City Government* (1909); F. H. MacGregor, *City Government by Commission* (1911), 35–40, 77–82; C. R. Woodruff, Ed. *City Gov. by Commission* (1911), chs. iv, xi, xii; Henry Bruère, *New City Government* (1912). E. C. B.

GALVESTON PLAN OF CITY GOVERNMENT. See Commission System of City Government; Galveston.

GAMBLING. Financial transactions depending for success chiefly upon chance or unknown contingencies are usually regarded as gambling contracts and are enumerated in great detail in many statutes aimed at the prevention of gambling. Such contracts may be summarized as: (1) betting or wagering, in which sums of money or valuables are staked on the happening, not happening, or outcome of some uncertain event, such as an election, race, game or contest between man or beast; (2) gaming, in which stakes are won or lost on the outcome of games of chance played with cards, dice and other devices, such as poker, roulette, faro, loto, craps, nickel-in-the-slot machines, etc.; (3) lotteries, raffles and gift enterprises of all sorts, in which the participants pay a valuable consideration for the chance of drawing a prize or receiving a sum of money or something of value, by lot; (4) various kinds of disguised gambling conducted under the guise of legitimate business, such as stock-jobbing, speculating or dealing in futures, where the actual delivery of commodities is not intended, but merely the settlement of future differences in prices.

Lotteries (*see*) stock-jobbing (*see*) and race-track gambling (*see*) are discussed separately and we shall deal here only with statutes covering gaming, betting and wagering on elections, games and contests other than horse-racing.

Civil Liability.—Throughout the United States such gambling contracts are declared invalid and unenforceable. Consequently, as no civil action can be brought, the winner cannot maintain an action against the loser for the stake, although in many states the loser who has voluntarily paid his losses to the winner is enabled to recover such losses. This right is usually extended to his wife and children. In many states, also, gambling on credit is prevented by statutes annulling securities given on gambling considerations.

Criminal Liability.—These provisions under the civil laws, are generally accompanied by provisions under the penal laws which make the act of gambling involved in such contracts a criminal offense. In such laws, however, the greatest diversity exists, both in wording and in detail of application. In some cases the laws apply indiscriminately to all forms of gambling; while in others they apply only to certain kinds. Many statutes specify in great detail the particular forms of gambling prohibited, but no two states agree on the same enumeration.

Election Bets.—With the exception of five states and one territory (Georgia, Massachusetts, Rhode Island, Texas, Washington, Philippines) all the states and territories specifically declare betting or wagering on elections illegal and regard such an offense as a misdemeanor. In seven states (Florida, Missouri, New York, Oregon, West Virginia, Wisconsin, Wyoming) the offender may be deprived of his privilege to vote, and in one state (West Virginia) he may be required to forfeit the sum wagered.

Places.—The other forms of gambling within the scope of this article are unconditionally prohibited in hotels, inns and taverns, and at race-fields, fairs and public places in general. In a few states (Texas, Virginia, West Virginia) gambling in public places is considered a greater offense than in private dwellings. Gambling houses, where gambling is carried on as a business, are invariably subject to severe legislation, and provisions are usually found which make it an offense to carry on gambling surreptitiously in billiard rooms and other places licensed to carry on legitimate business. In a number of jurisdictions, also, the law applies to gambling on vessels, trains and other vehicles, and in Ohio to the use of telegraph lines for such purposes.

Personal.—The effectiveness of these statutes is further increased by provisions which hold responsible all persons connected with such transactions, including in addition to those who actually gamble, those who own, or rent gambling houses or gambling devices, who act as agents, superintendents or assistants in any capacity, or who in any way entice minors to gamble or to enter a gambling resort.

While there are no federal statutes bearing upon this subject other than one dealing with lotteries (28 *Statutes at Large* 963) the states have endeavored to make their laws more effective by delegating to the municipalities the power to suppress gambling under ordinances in harmony with the state laws.

Penalties.—With the exception of a few states which regard gambling as a felony, the offense is regarded as a misdemeanor and the punishment is a fine, imprisonment or both, at the discretion of the court. It is also the custom in most places to destroy, by fire or otherwise, the gambling devices confiscated by the authorities.

Enforcement.—Owing to the connivance between the police and those who maintain public gambling places, and the payment of hush money and owing to the indifference in many communities with respect to the punishment of the minor forms of gambling in hotels, on trains and in public places, laws for the prohibition of gambling usually fail of enforcement; but sometimes serve to restrict and control the evil to some extent. A prime difficulty is that the man who loses, as well as the man who wins, seeks the opportunity of gambling; and in few cases will testify against those who gave him the opportunity. Evidence has to be sought by detectives; then follow "raids" by the police; then legal proceedings with small or no penalties.

See Amusements, Regulation of; Fraud, Prevention of; Futures, Dealing in; Lotteries; Police Power; Public Morals, Care for; Race Track Gambling; Stock Jobbing.

References: American Bar Association, *Annual Reports;* F. J. Stimson, *Federal and State Constitutions of the U. S.* (1908); J. R. Dos Passos, *Stock Brokers and Stock Exchanges* (1882); *Am. Year Book, 1910,* 421, and year by year.

S. McC. Lindsay and H. W. Nudd.

GAME LAWS. Game laws in America began with the hunting privileges granted the West India Company in 1629. Much legislation has been enacted by the several states with so little uniformity that Congress was asked (1912) to protect migratory birds of economic value to agriculture by a federal law. By 1800 fourteen states had fixed close seasons for many animals chiefly deer, wild turkeys, heath hens, partridges and quail, and further restricted promiscuous slaughter by hunters. Little effective legislation antedates 1850 but each decade since has brought more laws increasing the amount of protection and the range of animals covered. Game wardens (Maine, 1852) and hunters' licenses (1895) are effective means of enforcement. A "more game movement" was inaugurated in 1908 and the economic motive for game protection emphasized. From 1901 to 1912, 1,324 game laws were passed in the several states besides a large number of local ordinances. The U. S.

Department of Agriculture publishes annually a farmers' bulletin containing a summary of game laws in force throughout the country, giving the provisions relating to seasons, shipments, sale, limits and licenses. The protection of birds and their value to farmers gains recognition in legislation through the efficient work of the Audubon Societies. See CRUELTY TO ANIMALS.

S. McC. L.

GARBAGE REMOVAL. The primitive method of removing garbage was to allow pigs to run through the streets of a community and eat it up. There are some American towns where this practice prevails. In other places people who keep pigs come into the city and haul the garbage away, a method successful only where the garbage is unputrified. Occasionally a town disposes of garbage by putting it on the fields as a fertilizer. It has much fertilizing value, but quite rapidly sours a soil.

Another method is to get from garbage its fuel value, or at least to burn it up. For cities that are of less than 100,000 inhabitants this is regarded as the most economical method of disposal of its garbage. There is enough fuel, fertilizer and fat value in the average American garbage to make it pay the expense of the operation of the plant; to carry a certain amount of earning on the investment and properly managed, to leave a considerable amount after something has been written off for depreciation. An important item in the disposal of garbage is the cost of the hauling. Ordinarily it is collected by wagons, the most expensive form. Sea coast cities frequently tow it out to sea and dump it subject to flowing back on the tide. The duty of the city to remove garbage is based on the ground that garbage does harm from several standpoints. (1) It offends the esthetic sense. (2) It harms a neighborhood to have the odor of garbage in that neighborhood. (3) It diminishes the value of property to have garbage freely seen or freely observed in a good neighborhood. (4) It serves a breeding and feeding place for flies. According to the Chicago commission dealing with the subject, garbage should be collected daily, under strict regulation of the private scavengers who operate, by providing that garbage must be hauled in iron wagons with metal covers, and that collections may not be made in the downtown districts during the twelve hours beginning at 7 A. M.

That the subject is a pressing one is indicated by the commission's figures for Chicago of the tonnage of garbage collected by the city and sent to the private reduction plant: 100,133 tons were delivered in the first ten months of 1911, as compared with 84,248 tons for the same period of 1910. Betwen 85 and 90 per cent of the garbage collected by the city, it is said, is sent to the reduction plant. The rest is still being dumped into clay holes. In addition there is a quantity of garbage dumped by private scavengers, an estimate of which is not available.

See HEALTH, PUBLIC, REGULATION OF; SEWERS AND SEWERAGE; STREET CLEANING.

References: M. Cerf and others, *Refuse Incinerator* (1911); R. E. Goodell, *Reorganization of the System of Garbage Collection* (1912); W. F. Morse, "Collection and Disposal of Municipal Waste" in *Municipal Journal* (1909); H. de B. Parsons, *City Refuse and its Disposal* (1909).

CLINTON ROGERS WOODRUFF.

GARFIELD, JAMES A. James A. Garfield (1831–1881) entered political life in 1859 as a radical anti-slavery member of the state senate of Ohio. After a period of honorable military service, in 1861–62 he was elected to the national House of Representatives, where he took his seat in December, 1863. In Congress he attained distinction and leadership. He advocated the vigorous prosecution of the war, the confiscation of Confederate property, and the emancipation of the slaves, and in 1864, dissatisfied with the moderate policies of the Lincoln administration, he accorded to the Wade-Davis manifesto his unreserved approval. Throughout the era of reconstruction he continued to be identified with the radical Republican element.

In 1880, having served nine consecutive terms in the lower house, he was elected to the Senate. In the same year, however, he was hit upon by his party as a compromise candidate and was placed in nomination for the presidency. At the close of the vituperative campaign which ensued Garfield and Arthur triumphed over Hancock and English by a majority of 214 to 155 electoral votes.

Assassination at the hand of a disappointed office-seeker cut short the new President's career within four months following his inauguration. The principal political fact of these four months was the party disruption which arose from Garfield's disregard of the Conkling faction of New York politicians in the selection of his Cabinet officers and in the appointment of an anti-Conkling man to the collectorship of the port of New York.

See RECONSTRUCTION; REPUBLICAN PARTY; PRESIDENTIAL ELECTIONS.

References: J. A. Gilmore, *James A. Garfield* (1880); B. A. Hinsdale, Ed., James A. Garfield, *Works* (1881); W. O. Stoddard, *Life of James A. Garfield* (1889); H. C. Pedder, *Garfield's Place in History* (1882).

F. A. OGG.

GARRISON, WILLIAM LLOYD. William Lloyd Garrison (1805–1879) was born at Newburyport, Mass., December 10, 1805. He became a printer, and for a number of years worked as printer and editor at Newburyport,

Boston, and Bennington, Vt. In 1829 he joined Benjamin Lundy, who was editing the *Genius of Universal Emancipation* at Baltimore. Here his outspoken denunciation of the domestic slave-trade led to fine and imprisonment. He shortly returned to Boston, where, on January 1, 1831, he issued the first number of *The Liberator*, in which he proclaimed unqualified and relentless opposition to slavery. He was the prime mover in the organization of the New England Anti-Slavery Society in 1832, and the American Anti-Slavery Society in 1833; and was president of the latter society from 1843 to 1865. In 1833 he made a formidable attack on the American Colonization Society in his *Thoughts on African Colonization.* His intense opposition to slavery, based primarily on moral grounds, made it impossible for him to act with any political party, and he even refused to vote; while his extreme utterances tended often to alienate all save the most radical of his supporters: but the agitation which he initiated and vitalized gave the death-blow to slavery. On the adoption of the Thirteenth Amendment, in 1865, he discontinued *The Liberator*, and thenceforward turned his attention to other reforms. He died at New York City, May 24, 1879. See SLAVERY CONTROVERSY. References: W. L. and F. P. Garrison, *William Lloyd Garrison* (1885–89); L. Swift, *William Lloyd Garrison* (1911); A. B. Hart, *Slavery and Abolition* (1906).

W. MACD.

GAS LIGHTING, PUBLIC REGULATION OF. Thoroughgoing regulation of gas lighting necessitates information as to the following points: (1) franchise grants and their interpretation; (2) the cost of construction, maintenance and operation of the lighting properties including accurate valuations of all plants and their accessories; (3) the rates charged for gas and regulations as to service, with proper and adequate standards as to what reasonable rates and service are; (4) control over the accounting methods used by the gas company and over issues of new securities.

In general five methods of regulation have been followed: (1) law suit; (2) legislation, state and municipal; (3) initiative and referendum; (4) sliding scale method; (5) public service commissions. Regulation by law suit was the method employed during the middle part of the nineteenth century and has largely failed to secure results as it is too expensive and too cumbersome, and does not give a ready hearing to the interests of the consumer and the community as a whole. Regulation by statutory provisions largely failed as the provisions were evaded. The attempts to regulate by giving to the people and the companies power to initiate franchises and regulative ordinances proved inadequate because the people did not have sufficient information to draw up, or pass upon, the adequacy of the needed laws, ordinances and franchises. Under the sliding scale method, the price for gas and the rate of dividends are fixed; the company may increase its rate of dividends only by making a corresponding reduction in the price of gas. This method has been of no little efficacy but has been supplanted, as the others now have to an increasing extent, by the creation of public service commissions, municipal and state, with thoroughgoing control over the information indicated above as necessary for adequate regulation.

For adequate regulation there is needed a tribunal that will recognize the rights, duties and obligations of: (1) the individual consumer; (2) the community as a whole; (3) the corporation. Public service commissions, that is, expert administrative tribunals responsible to the people, with expert assistance in arriving at reasonable valuation, rates and standards of service, have proved to be the best agencies for the adjustment of the conflicting interests of these three parties to gas lighting.

Adequate regulation necessitates municipal ownership and operation of all the testing apparatus, especially photometers for testing the illuminating power of gas, machines for testing the heating quality of the gas, meter testing apparatus, equipments necessary for testing chemical properties, and the required number of stations for testing pressure.

See PUBLIC SERVICE COMMISSIONS; PUBLIC UTILITIES.

References: R. H. Whitten, *Valuation of Public Service Corporations* (1912); "Street Lighting" in University of Illinois, *Bulletin No. 51* (1911); E. S. Bradford, "Municipal Electric Lighting," "Municipal Gas Lighting" in Wisconsin Legislative Reference Bureau, *Bulletin* (1906); C. L. King, *Regulation of Municipal Utilities* (1912); various state and municipal public service commissions, *Reports*; D. F. Wilcox, *Municipal Franchises* (1910–11); Bruce Wyman, *Special Law Governing Public Service Corporations and All Others Engaged in Public Employment* (1911).

CLYDE L. KING.

GAYNOR, WILLIAM JAY. William J. Gaynor (1851–1913) was born at Whitestown, N. Y., in 1851. In 1875 he was admitted to the bar at Brooklyn. He early entered politics as a Democrat, and attracted attention by his vigorous opposition to corrupt officials and their methods. He was active in securing the conviction of John Y. McKane, one of the most notorious New York bosses, in 1894, for election frauds in Gravesend, and was a leader in the overthrow of the Democratic ring rule in Brooklyn. In 1893 he was nominated by the Republicans and independent Democrats for justice of the state supreme court, and elected; in 1907 he was reëlected. A decision of his in connection with a street railway strike in

Brooklyn, in January, 1895, was a notable statement of the obligations of railway companies to the public. In 1909 he was the Tammany candidate for mayor of New York, and was the only one of the ticket elected. An attempt to assassinate him was made in 1910. In 1913 he was renominated on an independent ticket, but died suddenly before the campaign began. **See** DEMOCRATIC PARTY; MAYOR AND EXECUTIVE POWER IN AMERICAN CITIES; NEW YORK CITY. **Reference:** *Am. Year Book, 1912, 1913.*

W. MacD.

GEARY LAW ON CHINESE. This statute, passed May 5, 1892, reënacts for ten years the existing laws concerning Chinese exclusion; places on the Chinese the burden of proof by "one credible white witness" of a right to remain in the United States; subjects Chinese adjudged unlawfully within the country to imprisonment at hard labor prior to deportation —a clause later declared unconstitutional, unless based on trial by jury; prohibits bail pending the hearing of habeas corpus proceedings on Chinese refused landing; requires Chinese entitled to remain in the country to register and receive a certificate of residence within a year, failing which they are adjudged unlawfully within the country and must be ordered deported; empowers the Secretary of the Treasury to make regulations for enforcement. **See** ALIEN; CHINA, DIPLOMATIC RELATIONS WITH; CHINESE IMMIGRATION AND EXCLUSION; NEGOTIATION OF TREATIES BY THE UNITED STATES. **References:** W. A. Richardson, *Supplement to the Revised Statutes of the United States*, II (1895), 13–14, citation of decisions 18–19; M. R. Coolidge, *Chinese Immingration* (1909), 213–233; Lucile Eaves, *History of California Labor Legislation* (191∪), 193–196.

E. H. V.

GENERAL COURT. The designation applied during colonial times to the legislative assemblies of Massachusetts and New Hampshire and subsequently to their state legislatures. The general court of Massachusetts is the continuation of the "Great and General Court" of the Massachusetts Bay Company. Under the charter of 1629 it consisted of a quarterly meeting of all the freemen or stockholders; and under the provincial charter of 1691 it was composed of the governor and council, or assistants, and the elected representatives of the towns. **See** COLONIAL CHARTERS; STATE LEGISLATURE. **Reference:** W. MacDonald, *Select Charters* (1899), 40–41, 208.

O. C. H.

GENERAL TICKET SYSTEM. See DISTRICT SYSTEM.

GENERAL WARRANT. See WARRANTS, GENERAL.

GENERAL WELFARE CLAUSE. The Constitution of the United States (Art. 1., Sec. viii, ¶ 1) gives Congress power "To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." This clause is often referred to as if it contained a substantive grant of power to provide for the general welfare. Such an interpretation is, however, entirely at variance with accepted principles of constitutional construction. The government of the United States is a government of enumerated powers. It is true that the powers are enumerated rather than defined; but if the government had authority in the large to care for the general welfare, there would be no reason for naming the powers granted. The very section which contains the words above quoted has some sixteen other paragraphs granting distinct powers to Congress.

There are, however, more serious questions. Does the clause grant a general power to tax? Or does it only grant the power in order to provide for the common defence and general welfare? Or does it, on the other hand, only grant the power to tax for carrying out the specific powers enumerated in the Constitution? One cannot say there is final and authoritative construction on which we can rely. The last of these three alternatives would appear on principle to be the correct one; but inasmuch as the specific purposes for which money is raised are not commonly stated in bills for raising revenue, this question can, with difficulty, if at all, be raised as a practical question. Again, should the words, "To pay the debts and provide for the common defence and general welfare," be closely attached to this power to *tax*, or are they in effect a distinct grant of power to *appropriate?* And, if the latter interpretation holds, is appropriation restricted to the objects concerning which Congress is given direct power to act, or is the power only limited by considerations of general utility? Here, as before, theories may be interesting but conclusions are difficult. In the debates concerning internal improvements (*see*) in the early decades of the nineteenth century this question received much consideration. We are probably justified in saying that the doctrine is now established by precedent and practice, that Congress can make appropriations for objects beyond its own immediate power of regulation and control. President Monroe, although he vetoed the Cumberland Road Bill, May 4, 1822, proclaimed his belief in the full power of Congress to grant money for general purposes: "My idea is," he said, "that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, national, not state, benefit."

See CONSTRUCTION; IMPLIED POWERS; INTERNAL IMPROVEMENTS.

References: J. D. Richardson, *Messages and Papers of the Presidents* (1896), I, 584–5, II, 162–173; W. W. Willoughby, *The Constitutional Law of the United States* (1910), I, 39–40, 588–593; J. R. Tucker, *The Constitution of the United States* (1899), I, 470–492.

ANDREW C. MCLAUGHLIN.

GENEVA ARBITRATION. The Geneva tribunal, provided under the Treaty of Washington to settle damages from Confederate vessels constructed or equipped in English ports, met at Geneva, Switzerland, on December 15, 1871. It consisted of five arbitrators chosen respectively by President Grant, the Queen of England, the King of Italy, the President of the Swiss Confederation and the Emperor of Brazil. It was governed by three rules of neutrality laid down in the treaty (*see* ALABAMA CLAIMS) and principles of international law not inconsistent therewith.

Bancroft Davis prepared the American case, charging Great Britain with various acts showing lack of due diligence in enforcing a neutral policy and claiming damages, direct and indirect, for the injuries committed by thirteen vessels—including the *Alabama*, *Georgia*, *Florida* and *Shenandoah*, which the British representatives thought the only ones coming under the arbitration. The persistence in pressing the indirect claims caused the British Government to threaten withdrawal from the arbitration. C. F. Adams (*see*), the American arbitrator, thereupon under instructions from Washington so far gave way that the tribunal, without expressing an opinion on the political question involved, ruled their indirect claims out.

The tribunal decided that the British lack of proper legislation could not justify failure of due diligence; and declared its liability for the acts of the *Florida* and *Alabama* and their tenders, and the *Shenandoah* after her departure from Melbourne. On September 14, it awarded to the United States a lump sum of $15,500,000 as indemnity. The award was signed by all arbitrators except Sir Alex. Cockburn (the English member), who declared Great Britain liable only for the cruiser *Alabama* and filed a dissenting opinion after adjournment. The $15,500,000 was found much above the claims acknowledged as good by the United States; and the balance was distributed to the insurance companies whose claims had been ruled out by the tribunal.

See ALABAMA CONTROVERSY; ARBITRATIONS, AMERICAN; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH.

References: J. G. Blaine, *Twenty Years of Congress* (1886), II, ch. xx; C. Cushing, *Treaty of Washington* (1873); J. C. B. Davis, *Mr. Fish and the Alabama Claims* (1893); J. W. Foster, *Century of Am. Diplomacy* (1900), 424–27; J. B. Moore, *Int. Arbitrations* (1898), I, ch. xiv, 556–682, *Digest of Am. Int. Law* (1906), VII, 52, 1059–1076; Edward Smith, *England and Am.* (1909), ch. xxii; Francis Wharton, *Int. Law Digest* (1887), III, 630–652; *Harper's Mo. Mag.* (Nov., 1872), 913–32.

J. M. CALLAHAN.

GENTLEMEN'S AGREEMENTS. Informal agreements between railroad officials usually with the object of securing the maintenance of rates, thus eliminating competition. See POOLING IN RAILROADS; TRAFFIC AGREEMENTS.

F. H. D.

GEOGRAPHIC BOARD OF THE UNITED STATES. This organization was created in 1890 by coöperation of representatives of the map-making bureaus of the Government as a Board on Geographic Names, for the purpose of settling in cases of disputed nomenclature the form to be adopted in all Government usage. Later in the same year, it was given official sanction by an order of President Harrison. Subsequent executive orders increased its powers. During its twenty-three years of existence, the board has rendered more than 8,000 decisions regarding place names. See AREA OF THE UNITED STATES; PHYSIOGRAPHY OF NORTH AMERICA. Reference: U. S. Geographic Board, *Reports*.

H. G.

GEOGRAPHICAL SURVEYS AND MAPS. Prior to the formal organization of the U. S. Coast and Geodetic Survey (*see*) in 1832, geographic work within the territory of the United States lacked well-determined base-lines; maps were mostly compiled from serviceable, though inaccurate, surveys constructed with chain and compass by state, county, or private surveyors.

Coast Survey.—The Coast Survey, since its beginning in 1807, has been continuously engaged in charting the shores and in carrying a net work of triangulation stations across the country for the proper control of local surveys. In recent years, it has mapped the coasts of Alaska, the Philippine Islands, and other outlying possessions of the nation.

This survey also is charged with the publication of tidal data, the making of magnetic observations showing the variation of the compass, and determination of the force of gravity as a basis for a correct measurement of the figure of the earth.

Army and Navy Officers.—Previous to 1870, federal officers did much geographical work in the West. Officers of the Navy have, from time to time, been detailed or given leave of absence to conduct explorations in the polar regions. The last of these expeditions was that of Peary to the North Pole in 1910.

General Land Office.—The General Land Office of the United States, since its reorganization by the act of 1836, has constructed land maps of the region west of the Mississippi.

Geographical Survey.—The first contoured topographic map of a state of the Union was undertaken by New Jersey and completed between 1877 and 1887. The general government constructed such topographic maps in the Rocky Mountain region as early as 1873 but the project was first extended to the national domain upon the organization of the United States Geological Survey, which has, since 1880, been engaged in the making of the topographic map of the United States (*see* GEOLOGICAL SURVEYS). Extended geological and geographical surveys have been carried on in Alaska and are still in progress.

Agricultural Department.—The Department of Agriculture began, in 1899, the publication of soil maps of selected areas with accompanying explanatory reports.

Special Maps.—The Weather Bureau, the Hydrographic Office, and the Forestry Service also issue maps, charts, and reports, dealing with the branches of geography with which they are concerned. The Geological Survey has executed an extended series of stream measurements, and in common with several state surveys has published documents designed to promote the advance of geographical education in schools and colleges.

See AREA OF THE UNITED STATES; BOUNDARIES OF THE UNITED STATES, EXTERIOR; BOUNDARIES OF THE UNITED STATES, INTERIOR; COAST AND GEODETIC SURVEY; GEOLOGICAL SURVEYS.

References: Eighth International Geographic Congress, *Report*, 1905; U. S. Coast and Geodetic Survey, *Reports*; Director of the U. S. Geological Survey, *Reports*; U. S. Coast and Geodetic Survey, *Catalogue of Charts, Coast Pilots, and Tide Tables* (1908); U. S. Geological Survey, *Topographic Maps and Folios and Geologic Folios* (1911); Henry Gannett, *Boundaries of the U. S. and of the Several States and Territories* (3d ed., 1904), *Dictionary of Altitudes in the U. S.* (4th ed., 1906), *Bulletin*, No. 226, 1904; A. H. Brooks, "Geology and Geography of Alaska" in U. S. Geol. Survey, *Professional Paper*, No. 45, 1906; R. D. Salisbury and W. A. Atwood, "Interpretation of Topographic Maps," U. S. Geol. Survey in *ibid*, No. 62, 1906; P. L. Phillips, A List of Geographical Atlases in the Lib. of Congress (1909).

J. B. WOODWORTH.

GEOLOGICAL SURVEY. The Geological Survey, one of the bureaus of the Department of the Interior, is one of the most active scientific agencies of the Federal Government. Its work consists in the survey and classification of the public lands of the United States, for the purpose of extending scientific knowledge and assisting in the conservation of natural resources. The field operations of the bureau were formerly distributed among four branches: the geologic, the topographic, the technologic, and the water resources. In 1910, the work of the technologic branch was transferred to the newly-created Bureau of Mines (*see* MINES, BUREAU OF). The geologic branch is conducting a thorough survey of the mineral deposits of the United States and of Alaska, and through a special land-classification board is classifying coal, oil, phosphate, metalliferous, arid and desert lands, and power sites. The topographical board is conducting a thorough survey of the surface of the United States and Alaska for the purpose of more accurate mapmaking. The water-resources branch investigates power sites and irrigation schemes, cooperating for the purpose with the Reclamation (*see*) and Indian bureau (*see* INDIAN COMMISSIONER) and the Forest Service (*see*). The Geological Survey is employed by the President to secure the information upon which he bases orders for the withdrawal of public lands from entry under the homestead and other laws. The appropriations for its work for the fiscal year, 1909–10, amounted to $1,497,815. See MINES AND MINING, RELATION OF GOVERNMENT TO; PUBLIC LANDS. **References:** Eighth Int. Geographic Congress, *Report*, 1905; U. S. Coast and Geodetic Survey, *Annual Reports, Catalogue of Charts, Coast Pilots and Tide Tables* (1908); U. S. Geologic Survey, *Director's Annual Reports, Topographic Maps, Folios and Geologic Folios* (1911), *Bulletin*, No. 226 (1904), *Bulletins* from states and territories (3d ed., 1904), *Dictionary of Altitudes in U. S.* (4th ed., 1906); A. H. Brooks, "Geology and Geography of Alaska" in *ibid, Professional Paper*, No. 45 (1906); R. D. Salisbury and W. A. Atwood, "Interpretation of Topographic Maps" in *ibid*, No. 60 (1906).

A. N. H.

GEOLOGICAL SURVEYS. The geological survey of an area has for its object the delineation of the distribution of its properly classified rock formations, upon a map of suitable scale, with accompanying explanatory reports, sections, and other information pertaining to the occurrence of fossils, minerals, or other substances of economic importance.

Early Statistical Surveys.—The state of North Carolina ordered a report to be made upon the geology of that state in 1820; but the first official geological survey of an American state was carried out by Massachusetts in 1833. Within the next decade most of the states on the Atlantic seaboard completed preliminary surveys of their geological structure and mineral resources. Those states possessing valuable mineral deposits soon undertook more detailed surveys and some of those organizations have been maintained as permanent bureaus, particularly in New Jersey. The geological survey of New York early assumed national importance because of the numerous fossils serving as a key to the geology of the rocks below the coal measures over vast areas in the

interior of the continent and in the Rocky Mountain region.

The coming into use of various raw materials, such as petroleum, natural gas, bauxite, and phosphates, and new discoveries of useful metals, from time to time, have led to resurveys in the older states, and original surveys in the newer commonwealths of the West.

Early National Surveys (1842–1879).—A federal geological survey was postponed until the progress of exploration and the settlement of the western territories called for information concerning the natural resources of these public lands. The geographic service of the Army early conducted expeditions into the western country, frequently accompanied by a civilian who acted as geologist and made reports to the Government. Notable among these explorations were those of Frémont in 1842–43; Stansbury, Marcy and McClellan, and Ives in the next decade: but those geologists were "camp-followers" with limited opportunities for scientific observations.

More important results were achieved under the General Land Office by the appointment of Foster and Whitney as United States geologists to survey the geology of the iron and copper region of Lake Superior; their maps and reports appeared in 1850. They were the first Government officials able to direct their movements in the field so as to secure a geological survey.

In 1867 the national interest in the construction of transcontinental railways in the West led Congress to organize the 40th Parallel Survey, composed of an independent body of professional geologists and topographers, the first adequately equipped geological survey undertaken by the Federal Government. Clarence King was placed in charge of this survey, and in the same year Hayden was authorized to conduct the geological and geographical survey of the territories. Later an act was passed inaugurating the geological and geographical survey of the Rocky Mountain region.

Federal Geological Survey (1879–1913).—March 3, 1879, Congress discontinued the existing surveys and created the office of Director of the United States Geological Survey, shortly appointing Clarence King to that position. In 1883 the survey was authorized to make a geological map of the United States, as a base for which a topographic map was undertaken. By 1911, about 1,128,500 square miles had been then surveyed, or, exclusive of Alaska, about three-eighths of the United States. Over 186 geological folios have been published, besides 53 monographs, 530 bulletins, 316 water-supply papers, 75 professional papers, and 33 annual reports. To Dec. 1, 1912, the Geological Survey has classified and appraised as coal lands 17,460,069 acres, with a formal valuation of $742,638,249. Large areas of the western oil fields have been examined, and withdrawals of oil land have been made, aggregating 4,677,302 acres. A large number of power sites on public lands have been withdrawn, amounting to 101,758 acres.

See AREA OF THE U. S.; GEOGRAPHICAL SURVEYS AND MAPS; PHYSIOGRAPHY OF NORTH AMERICA.

References: G. P. Merrill, *Contributions to the Hist. of Am. Geology* (1906), 189–733; Nat. Museum, *Report*, 1904; Frederick Prime, "Catalogue of Official Reports upon Geological Surveys of the U. S. and Territories, and of British North America" in Am. Institut. Mining Engineers, *Supplement*, VII (1879); W. Quitzow, *Geologen-Kalender, für die Jahre 1911–12* (1911); P. C. Warman, *Catalogue and Index of the Publications of the U. S. Geological Survey, 1880–1901;* U. S. Geol. Survey, *Bulletins*, No. 7 (1884), 177, (1901), 858; U. S. Geographical Survey, *Annual Reports* (1880 to date); T. M. and J. B. Marcou, *Mapoteca Geologica Americana* (1752–1881).

J. B. WOODWORTH.

GEORGE JUNIOR REPUBLIC. The George Junior Republic at Freeville, N. Y., was founded by William R. George in 1890. It receives boys and girls who really belong to the delinquent class, though many of them have never been brought into court. The fundamental idea of the George Junior Republic is self-government, as the founder calls it "a laboratory experiment in democracy. . . . Our standard is citizenship." All of the boys and girls are voters in the commonwealth and they pass laws for the government of the institution. Mr. George says: "the young citizens are supreme in all the affairs of the citizen government of the Junior Republic excepting the supreme court and all of the details of the discipline and detail management are determined by the pupils."

The fundamental principle of the George Junior Republic is "nothing without labor." Every inmate is required to work. He is paid in currency of the republic and is required to pay for his board and all other things which he receives at the republic. Those who will not work industriously are dealt with as paupers and criminals and receive scant allowance.

It is maintained by the trustees and advocates of the school that it is extraordinarily successful in inspiring manliness, initiative, industry and self-respect; and that under this plan better results are secured than by any other plan with the same class of boys. Other George Junior Republics have been established in other states on the same general plan.

See CHILDREN, DEPENDENT, PUBLIC CARE OF; COURT, JUVENILE; REFORMATORIES; SCHOOLS, INDUSTRIAL.

References: W. R. George, *Junior Republic, Its History and Ideals* (1910); H. H. Hart, *Preventive Treatment of Neglected Children* (1910).

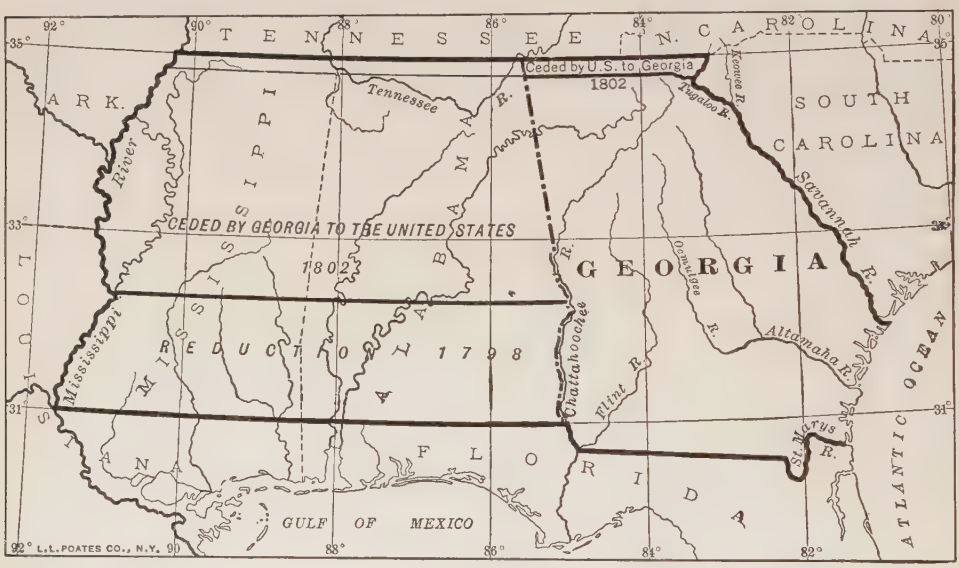
HASTINGS H. HART.

GEORGIA

Early History.—The first settlement of this rich territory was due to the well-known efforts of Oglethorpe in behalf of the victims of the English law of debt. Associating with himself a number of influential men, he obtained, June 9, 1732, a charter granting the lands between the Savannah and Altamaha rivers. November 17, he sailed from Gravesend in the *Anne*, Captain John Thomas, bringing some 130 picked emigrants. Landing first in South Carolina, they settled on Yamacraw Bluff, the site of Savannah, February 12, 1733. Within a few years bands of Salzburgers, Highlanders, Swiss, Moravians and new recruits from England arrived, and outlying settlements were made. Oglethorpe remained with the colony ten years; the success of the coast settlement is largely due to his unselfish devotion. An important element of the settlers of Georgia however came from another source. Just after the Revolution many emigrants from Virginia and the Carolinas established themselves about the Broad River. A wide belt of semi-frontier separated them from the people of the coast, from whom they differed in many characteristics. Their descendants make up the greater part of the present population of the state.

Colonial Government.—The government of the colony was placed in the hands of twenty-one trustees, residing in England. With the best intentions, they mismanaged badly. They restricted land-tenure, prohibited slaves and liquor, forced the cultivation of silk, hemp, and flax, and left little initiative to the colonists. After Oglethorpe's departure, open discontent broke out. The trustees, finally, feeling their policy had failed, surrendered the colony to the Crown, June 23, 1752. Georgia passed under direction of the Lords Commissioners for Trade and Plantations, who drew up a plan of government similar to that in the other royal colonies. This system formed the basis of all later constitutions. Under the liberal self-government it provided, the colonists increased rapidly in numbers and wealth up to the outbreak of the Revolution.

First Constitution.—The approach of this crisis found Georgia divided in counsel. The large number of loyalists long hampered the active minority of patriots. When the news of the Declaration of Independence came, a convention elected from the parishes met in Savannah and framed the first state constitution, ratified February 5, 1777. The preamble recites the oppressions of Britain, the Declaration of Independence, and the recommendation of Congress as to the establishment of state governments. Sixty-three articles follow. The executive legislative and judicial departments are declared separate and distinct. The legislature was to consist of one house, elected annually by the freeholders of the counties, now created to supersede the old parishes. The governor was chosen annually by the assembly on its first day of meeting. His powers as compared with those of the colonial governor were greatly restricted. An executive council was elected by the assembly from its own mem-



Boundaries of the State of Georgia, Showing Territorial Changes

bers. A new system of courts was established. Toleration of all religions was declared; and the usual provisions of a bill of rights set forth.

Second Constitution.—There was little opportunity to test the new constitution, as the arrival of the British forces soon threw the state into confusion. Georgia early signed the Articles of Confederation in 1778, and was the fourth state to ratify the Federal Constitution, January 2, 1788. This led to the adoption of the second state constitution in 1789, which brought the government into proper adjustment with that of the United States. A senate was created; the executive council abolished; the governor's term extended to two years; and the manner of his election changed. The representatives were to select three persons, of whom the senate should choose one to serve as governor.

Third Constitution.—Other changes were soon demanded, and after a number of amendments in 1795, a convention was held in Louisville which adopted a third constitution in 1798. All elections in the assembly were to be by joint ballot; suffrage was extended by dropping the property qualification of electors; the governor was given the veto and pardoning power; and the offices of secretary of state, treasurer, and surveyor general were created, their election being placed in the assembly. In 1799 the office of comptroller general was added by statute. The constitution of 1798 remained the basis of government until the Civil War. It was supplemented by the Judiciary Act of 1799; and by various amendments it was modified and adapted to changing conditions. The general trend was toward an increase in the direct political influence of the people. The governor, after 1823, was elected by popular vote. In 1834–5 the property qualification of Senators and Representatives was dropped. In 1845 a similar change was made in the office of governor. In 1840 the assembly was made biennial, and in 1842 senatorial districts were created, and the present method of apportioning representatives was introduced.

Facts of Constitutional Interest.—Several points of interest in the early history of the state may be noted briefly. It was Georgia's resistance to the interpretation of federal jurisdiction in the case of Chisholm *vs.* Georgia (*see*) that led to the adoption of the Eleventh Amendment (*see*). Complications growing out of the Yazoo land frauds produced the *cause celèbre* of Fletcher *vs.* Peck (*see*). The settlement of Georgia's claims to the land between the Chattahoochee and Mississippi, and later the difficulties between state and federal authorities arising from the Indian question, involve a number of points of great legal and constitutional interest.

Parties.—Political parties in Georgia began with the early controversy between Federalists and Republicans. The Yazoo troubles introduced a long period of personal politics. James Jackson was the leader of the aristocratic party, and John Clarke, his bitter personal enemy, was followed by the small planters and frontier element. After Jackson's death Wm. H. Crawford and then George M. Troup became leaders, and the two factions were known as the Troup and Clarke parties. The rivalry became acute in 1819 when Clarke defeated Troup for the governorship by a small majority. In 1821 Clarke won again by two votes, the election being in the assembly. In 1825, the election being now in the hands of the people, Troup defeated Clarke by 683 votes. These personal struggles became wearisome, and the Clarke partry sought a principle of cohesion in condemning Troup's defiance of the Federal Government during the Indian land agitation. They took the name "Union Party." Troup's followers accepted the challenge and called themselves the "State Rights Party." By 1840 these local parties had been absorbed into the national Democratic and Whig parties respectively. During the agitation of 1850 the southern Whigs took the name "Constitutional Union Party" and supported Clay's compromise measures, while the southern Democrats became the "Southern Rights Party" and threw themselves into the opposition. After the compromise the old alignment revived for a time, but by 1860 the Whigs had disappeared from the state; and since the war the Democrats have been practically the only party. All elections and political questions are settled in white Democratic primaries, and few take the trouble to vote in the *pro forma* regular elections.

Civil War and Reconstruction.—The period of Civil War and reconstruction (*see*) gave Georgia three constitutions within seven years. The state withdrew from the Union January 19, 1861, despite the strong opposition of such leaders as Alexander H. Stephens (*see*),Benjamin H. Hill and Herschel V. Johnson. The constitution was changed to conform to the new relations with the government of the Confederate states. At the close of the war President Johnson's plan of reconstruction was promulgated, a convention was called in October, 1865, and a new constitution adopted. The ordinance of secession was repealed, slavery abolished, and the war debt repudiated. But Congress refused to recognize Johnson's reorganized state governments, and formulated a scheme of reconstruction more to their own liking. Under this, General Pope, in military command, called a convention from lists of his own, excluding most of the reputable citizens. Delegates, 170 in number, carpet-baggers and negroes, met in Atlanta, December 7, 1867, the session lasting till March. The efforts of a few strong men made the constitution of 1868 a good one. For the first time provision was made for systematic public education. Slavery and political discrimination

of race were abolished. Judges of the supreme and superior courts were to be appointed by the governor. The terms of the state officers were extended to four years. The general assembly was to meet annually.

Seventh Constitution.—The whites soon gained control of the polls, and at once proceeded to exclude negroes from office. This brought back reconstruction. Congress put the state under military government, and Georgia was not finally admitted to the Union until July 15, 1870—the last state to be restored. Although the constitution of 1868 was not unsatisfactory, some prejudice was always felt against it as emanating from the carpet-bag government. A new convention was called, and the seventh constitution was ratified by vote of the people December 5, 1877. This, modified by many amendments, is still in force (1913). Many of the innovations of 1868 were swept away. Others were retained or modified as shown desirable by the experience of the decade.

Present Government.—Under the constitution of 1877, as amended to date, the government is vested in three coördinate departments. The legislative power is in a general assembly consisting of a senate and house of representatives. Members are chosen for two year terms, together with the governor and state officers, at the general state election, on the first Wednesday in October of even years; though the actual choice is determined in an earlier primary. There are 44 senators and 186 representatives. The six most populous counties are allotted three representatives each; the next 26, two each, and the remaining 116, one each—an inequitable arrangement which makes it possible for 15,000 people to outvote 150,000. The executive officers are chosen at the same time as the legislators. There is no lieutenant-governor, the president of the senate and speaker of the house being next in succession to the governor. The other officers are secretary of state, treasurer, comptroller general, attorney general, school commissioner, commissioner of agriculture, railroad commissioners, prison commissioners, and various other officers, boards and commissions. There has been a noticeable tendency to increase the administrative functions of the state in recent years.

The judicial power is vested in a supreme court of six judges; a court of appeals of three; twenty-five superior courts, with circuits covering from one to ten counties each; and the county and city courts, courts of ordinary, and justices of the peace. The powers of the court of ordinary and of probate are vested in an ordinary for each county from whose decision there is appeal to the superior court. The courts of ordinary have large administrative functions; they have powers in relation to roads, bridges, ferries, public buildings, paupers, county officers, county funds, county taxes, and such other county matter as may be conferred on them by law. In many counties county commissioners, appointed by the grand jury, discharge these administrative duties.

The powers of taxation over the whole state can be exercised by the general assembly for educational purposes in instructing children in the elementary branches of English education only. But the constitution also provides that there shall be a thorough system of common schools with separate schools for white and colored races; provides that a poll tax and a special tax on shows, on the sale of liquor, and one or two other special taxes, shall be set aside for support of common schools. An amendment of 1912 makes high schools part of the system. The general assembly is permitted to make from time to time such "donations" to the state university as the conditions of the treasury would authorize, as well as similar appropriations to a college and university for the education of persons of color. A most interesting phase of the present constitution is the amendment of 1908 prescribing qualifications of electors. Under this negroes are practically excluded from the polls, except the few whose intelligence or property entitles them to vote.

Population.—In 1790, the population was 82,548; in 1820, 340,985; in 1860, 1,057,286; in 1900, 2,216,331; in 1910, 2,609,121.

See COLONIZATION BY GREAT BRITAIN IN AMERICA; CHISHOLM VS. GEORGIA; ELEVENTH AMENDMENT; FLETCHER VS. PECK; ALEXANDER H. STEPHENS.

References: R. P. Brooks, "Bibliography of Georgia Hist." in the University of Georgia, *Bulletin* (1910); J. H. T. McPherson, *Hist. and Civil Government of Georgia* (1908); C. C. Jones, Jr., *Hist. of Georgia* (1883); Wm. B. Stevens, *Hist. of Georgia* (1847); U. B. Phillips, "Georgia and State Rights" in Am. Hist. Assoc., *Reports* (1901), II, 3–224; G. G. Smith, *Story of Georgia* (1900); I. W. Avery, *History of Georgia* (1881).

J. H. T. McPHERSON.

GERMANY, DIPLOMATIC RELATIONS WITH. Revolutionary Period.—During the American Revolution Prussia maintained a friendly neutrality toward the struggling colonies. Through his minister, Frederick the Great informed Arthur Lee, the agent of the Continental Congress, that nothing would afford him greater pleasure than to hear of the success of the Americans. Hatred for England rather than love for America was his motive. Efforts were made to secure the active support of Frederick in hope that he would interfere with England's employing German mercenaries. In 1777, even without a treaty, Hessian recruits were prevented from passing through Prussian territory on the Rhine.

First Treaty of Commerce with Prussia.—After America had won her independence the

Prussion minister at the Hague, Thulemeier, proposed, in 1784, to the American representative there, John Adams, the conclusion of a treaty of amity and commerce. It was completed by the middle of 1785 and signed by Franklin, Jefferson, and Adams for the United States and Thulemeier for Prussia. Each of the four signed at a different time and in three different countries, the draft having been carried from one to the other between July 9 and September 10. Congress ratified it in May, 1786. It was limited to ten years. Owing partly to the urgency of the American negotiators and partly to the influence of the recent armed neutrality (*see*) this treaty contained stipulations very favorable to neutral commerce, which America has ever since been endeavoring to have universally established, and which were partially established between the European powers by the Declaration of Paris of 1856.

Second Prussian Treaty.—Three years after the first treaty had expired by its own limitation, a new one was negotiated in 1799 by John Quincy Adams, who was the American representative at Berlin during his father's presidency. The provisions favoring neutral commerce were omitted. It was the American imbroglio with France in the effort to preserve neutrality which furnished the chief motive for strengthening friendly relations with Prussia. Ratifications were exchanged in 1800. This treaty, limited to a period of ten years also, expired in the midst of the Napoleonic wars.

Other Commercial Treaties (1828–1861).—Not until 1828, after the *Zollverein* had established Prussia's commercial dominance in Germany, was another treaty of amity and commerce with Prussia completed. This was one of the many treaties negotiated by Henry Clay for the purpose of extending the commercial sphere of the United States, and establishing his favorite principle of complete reciprocity in tonnage dues. The possession, disposition, and succession of property of nationals of one country domiciled in the other was another important matter established. For matters not governed by subsequent conventions, this treaty is still in force, not only for Prussia but for the German Empire.

In the preceding year a similar treaty had been made with the Hanse cities. These served as models for numerous treaties concluded with other German powers, in the decade following 1835, by Henry Wheaton. Important among these were one in 1840 with Hanover, the head of the *Steuerverein;* one in 1844 with Würtemberg; and one in 1845 with Bavaria. Two Wheaton treaties were not ratified: That of 1844 with the entire *Zollverein* was rejected by Congress because it was thought that too great concessions were made; an extradition treaty of 1845 with Prussia and several other German states was rejected because under it a state was exempted from the necessity of surrendering its own citizens. Another treaty with Hanover was concluded in 1846 and acceded to by Oldenburg in the following year. Another in 1861 with Hanover was the last with that state, since its conquest and absorption by Prussia soon thereafter terminated all separate relations between Hanover and foreign powers.

Extradition, Expatriation and Commercial Relations (since 1852).—In 1852 Prussia concluded an extradition treaty for herself and eighteen other states of the then existing Germanic Confederation to which six more later acceded. George Bancroft, minister to Prussia, concluded a sheaf of naturalization treaties with German states in 1868—first one with the North German Union, then one each with Bavaria, Baden, Würtemburg, and Hesse. After the creation of the German Empire in 1871, Secretary Fish wanted to replace all these by a new treaty for the whole Empire. Bancroft dissauded him from attempting, at a time when national feeling ran so high, to negotiate a treaty which would relieve emigrating Germans from the rigor of German military laws. Consequently the separate treaties were allowed to stand and are still valid (1913) in matters connected with citizenship, property, naturalization, and to a certain extent with commerce. Alsace-Lorraine was, of course, not included, and in some controversies involving inhabitants of this district recourse has been had to treaties made with France before 1870. The constitution of the Empire contains no provision for abrogating the separate treaties. In some cases the German foreign office has ruled that such agreements are valid and that new treaties and laws may be made by the separate states. It cannot be said that fixed rules have been established. Much litigation and many negotiations have arisen out of these complex relations, especially with reference to the working of stringent military regulations. A consular convention was concluded for the whole Empire in 1871, covering most commercial and economic matters and some political. In recent years many controversies have occurred and many understandings have been reached regarding products supposed to be deleterious, such as American diseased meats, poisonous paint on German toys, etc., and concerning discriminatory tariffs. Various recent volumes of *Foreign Relations* contain much correspondence on these and other matters, culminating in the temporary commercial agreement of 1907, to remain in force until six months after either party gives notice of its termination; and in the convention of 1909 regulating patents.

Samoan Controversy (1879–1899).—During the last two decades of the last century, the Samoan difficulty disturbed the relations between the United States and the German Empire and involved both with Great

Britain. In 1879 each of the two latter powers obtained a right to establish a naval station in the Samoan islands. Seven years earlier the United States, which power had already for two decades had special interests and a representative there, had secured a similar right to a naval station. Unauthorized attempts had been made to establish an American protectorate. In 1884 Germany concluded an agreement with the native government to furnish an adviser and supervise the police forces. The United States and Great Britain objected. A conference in 1887 between representatives of the three powers at Washington failed to establish harmonious relations. In 1889 Germany announced that a state of war existed with Samoa and invited the other two powers to a new conference to be held in Berlin. This resulted in a tripartite arrangement to maintain order under the nominal control of the native government. It worked badly but endured for ten years. In 1893 a joint naval display suppressed civil war, but it broke out again the following year. By conventions in 1899 the partnership was dissolved. Great Britain gave up all her interests to the other two, receiving in compensation exclusive interests in other Pacific islands. The United States acquired in full sovereignty Tutuila and adjacent islands where her special interests had been; and Germany acquired full sovereignty over the rest of the group.

Latin America.—The supposed intention of Germany to get a foothold in South America led to a state of terror, when in December, 1902, Venezuelan gun boats were seized and La Guayra, a Venezuelan port, was blockaded by Germany, in an effort to compel the adjustment of certain debts and claims of German citizens. On December 20, a formal blockade was announced and the hostilities came to an end in February, 1903, through the diplomatic intervention of the United States. "At the suggestion of President Roosevelt, who declined an invitation to act as arbitrator, it was finally agreed, May 7, 1903, that the demands . . . be submitted to the Hague Court."

See ALIEN; CITIZENSHIP; COMMERCE, INTERNATIONAL; EXPATRIATION; MONROE DOCTRINE; SAMOA, DIPLOMATIC RELATIONS WITH.

References: George M. Fisk, *Beziehungen zwischen Deutschland und den Vereinigten Staaten* (1897), ch. xiv, 254; J. B. Moore, *Digest of Int. Law* (1906), I, 536–554, V, 617–621; Theodore Lyman, *Diplomacy* (1828), I, 131–153, on early relations; on Samoa, J. B. Henderson, Jr., *Am. Diplomatic Questions* (1901), 205–286, and J. W. Foster, *Am. Diplomacy in the Orient* (1903), 386–398; J. H. Latané, *Am. as a World Power* (1907), ch. xvi.

W. R. MANNING.

GERMANY, FEDERAL DIET OF. The popular branch of the German legislature, also called the Reichstag, which stands for the national idea in the organization of the Empire, just as the federal council, or Bundesrath, stands for the federal idea. The federal diet is composed of 397 members, elected by a direct general ballot, under the law of May 31, 1869, with certain minor revisions. Every German male citizen, 25 years of age, who has belonged for at least one year to a state of the Empire, is eligible to the federal diet, provided he is not excluded by certain legal disabilities. The ratio of members to the population, at the time the election law was passed, was 1 to every 100,000 inhabitants. Political reasons have prevented a new reapportionment since 1869. Every male German, 25 years of age, not excluded by certain legal disabilities, may vote for members of the federal diet in that state where he has his domicile. The mandate period is five years, but the diet may be dissolved by the Kaiser with the consent of the Bundesrath. The members of the federal diet receive a compensation of 3,000 marks per annum, $750 a year, together with railroad transportation. The apportionment of members is as follows: Prussia, 236; Bavaria, 48; Saxony, 23; Württemberg, 17; Alsace-Lorraine, 15; Baden, 15; Hesse, 9; Mecklenburg-Schwerin, 6; Saxe-Weimar, Oldenburg, Brunswick, and Hamburg, 3 each; Saxe-Coburg-Gotha, Saxe-Meiningen and Altenburg, 2 each, and the remaining states, one each. See FEDERAL STATE; GERMANY, FEDERAL ORGANIZATION OF. **References:** B. E. Howard, *The German Empire* (1906); A. L. Lowell, *Governments and Parties in Continental Europe* (1897).

B. E. H.

GERMANY, FEDERAL ORGANIZATION OF

General Description.—The German Empire is a federal organization composed of 25 states, 22 of which are monarchies and 3 republican city states, as follows: Prussia, Bavaria, Saxony, Würtemberg, Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Brunswick, Saxe-Meiningen, Saxe-Coburg-Gotha, Saxe-Altenburg, Anhalt, Schwartzburg-Rudolstadt, Schwartzburg-Sonderhausen, Waldeck, Reuss ältere Linie, Reuss jüngere Linie, Schaumburg-Lippe, Lippe, Lübeck, Bremen and Hamburg. The German Empire is a union of states, not a league of princes. Power not specifically granted by the constitution to the Empire is reserved to the individual states. While the Empire may en-

large its own powers under the constitution—the so-called "Kompetenz-Kompetenz"—yet until it does so the states have a free hand. By Article IV of the constitution, the Empire is given power of supervision and of legislation over matters which affect the general interest of the country. There is thus placed under the control of the imperial authority such things as the regulation of free migration, commerce and imperial taxation, customs duties, citizenship and passports; the regulation of weights and measures, coinage and the emission of paper money; general banking regulations, the issuing of patents and copyrights, the control of railways and navigation on the common waterways; postal and telegraph matters; legislation with respect to the whole domain of civil and criminal law and legal procedure; control of military matters and the regulation of the press and of public assemblies. Where the imperial legislation is active, state legislation in the same field is excluded.

The Kaiser and his Rights.—By the terms of the imperial constitution, the King of Prussia, whoever he may be, exercises the presidial rights and bears the title "German Emperor." The rights of the imperial dignity, however, attach to the Prussian Crown and not to the person of the ruling monarch. The rights of the Kaiser are of two kinds: personal and governmental. First, among the personal rights is the right to the title, "German Emperor." This title carries with it no territorial dominion. The Kaiser, as such, is not monarch *over* the Empire, but monarch *in* the Empire. He has a right, also, to the imperial standard and coat of arms. He enjoys special privileges before the criminal courts. He is not responsible in that there is no tribunal before which he may be brought to answer for any act or omission. As Kaiser he receives no income from the imperial treasury. As to his governmental rights, the Kaiser is the sole and exclusive representative of the Empire. While he cannot declare war, he may repel an invasion of German soil. Treaties affecting matters of imperial legislation require the consent of the Bundesrath and the approval of the Reichstag. The Kaiser appoints and receives ambassadors, ministers and accredited representatives. He has the right to convene, open, close and prorogue the Bundesrath and Reichstag. He must engross and publish the laws, but he has no power of veto nor has he, as Kaiser, the right of initiative in legislation. He supervises the execution of the laws and may bring the case of a recalcitrant state to the attention of the Bundesrath, which as a last resort may order an "execution." The Kaiser appoints the imperial chancellor and the heads of minor officials of the administrative hierarchy. He appoints, on motion of the Bundesrath, the judges of the imperial court, and he possesses in certain instances the right of pardon. In military matters he has monarchical power of an extensive character, being commander-in-chief of the land and sea forces, and all German soldiers are bound to him personally by the oath of allegiance.

The Bundesrath.—The Bundesrath, or federal council, is an institution peculiar to the German system. It is not an upper house, yet it performs functions which usually fall to such bodies. An organ of legislation, it has no power of deliberation, but registers the will of the several states by whom it is instructed. It can make no law without the consent of the Reichstag, yet it possesses a wide ordinance power. Standing for the federal idea in the empire, it is the place of all places where the individual states may assert themselves and the play of state interests find their adjustment. It is the center of the imperial government. The Bundesrath is composed of 58 delegates representing the members of the Bund, the number each state may appoint being determined by the number of votes which each possesses in the Bundesrath. The votes are distributed as follows: Prussia, 17; Bavaria, 6; Saxony and Würtemberg, each 4; Baden and Hesse, each 3; Mecklenburg-Schwerin and Brunswick, each 2; and the rest of the states, including the three Hanse cities, one each. The Bundesrath is not primarily a deliberative body, but a body which records the instruction of each state. Each delegation votes as a unit. The Bundesrath determines its own constitution, passing upon the credentials of its members but having no right to verify the instructions thereof. It transacts business under its own standing orders, the imperial chancellor presiding and conducting its affairs. No number is fixed by the constitution as requisite for a quorum, and any least number is competent to transact business. The Bundesrath not only passes upon all legislative measures, but it imparts the sanction to all laws. It possesses large administrative powers, issues important ordinances, and exercises momentous judicial functions. Members of the Bundesrath have a right to the floor of the Reichstag and must be heard upon all subjects if they wish it.

The Reichstag.—For a discussion of the Reichstag, *see* GERMANY, FEDERAL DIET OF.

Imperial Chancellor.—The imperial chancellor, appointed by the Kaiser from among the Prussian members of the Bundesrath, is the sole responsible minister of the Empire, the supreme administrative authority. He is the instrument and adviser of the Kaiser in the conduct of all those activities which constitute the Kaiser's prerogatives. As the highest administrative authority, the chancellor has under his control all the other administrative officials in so far as they are imperial in character. He is the organ through which transactions take place between the states on the one hand and the Kaiser, Bundesrath and Reichstag on the other. All ordinances and

decrees of the Kaiser require for their validity the countersignature of the chancellor, who thereby assumes the responsibility for them.

Federal Jurisdiction.—Germany possesses a uniform civil and criminal code and a uniform bankruptcy law. The administration of justice is effected under federal laws regulating the orgnization of the courts, establishing the rules of procedure and fixing the fees incident to the action. The Empire has not taken away the jurisdiction of the several states, but the exercise of it is regulated by federal norms. Broadly speaking, the administration of justice is exercised by the individual states in conformity with federal provisions and under obligation to aid mutually in the execution of all judicial decisions and decrees. The courts of Germany are all state courts with the sole exception of the federal supreme court, or Reichsgericht, located in Leipzig.

Citizenship.—As in all federal governments citizenship in Germany is dual. Unlike citizenship in the United States, state citizenship in German is primary. To become a citizen of the Empire one must first become a citizen of one of the German states. State citizenship does not change automotically, as in the United States, with change of state domicil, nor does the fact that one is a citizen of one state prevent the acquisition of citizenship in several states at the same time. This cumulative citizenship, transmitted from father to children, is a source of much confusion.

See Federal State; Germany, Federal Diet of; States, Classification of; United States as a Federal State.

References: P. Laband, *Deutsches Staatsrecht* (1903); G. Meyer, *Deutsches Staatsrecht* (1905); B. E. Howard, *The German Empire* (1905); A. L. Lowell, *Government and Parties in Continental Europe* (1897); J. W. Burgess, *Pol. Sci. and Constitutional Law* (1891), index. Burt Estes Howard.

GERRYMANDER. The gerrymander is a device by which the ingenuity of politicians makes it possible for the dominant party so to group the political areas composing an election district as to give undue advantage to its own local majorities. The object is to concentrate the majority of the opposite party while scattering its own—in other words, to carry many districts by narrow margins while the opposition carries few districts but by large majorities. For example: suppose there are ten counties casting 2,000 votes each to be divided into five districts by a Republican legislature, each district to elect a state senator. Six of the counties have Democratic majorities, and in the whole area the Democrats have a majority of, say, 2,500 votes. But this majority is unequally distributed in the six counties, being very small in four and mainly concentrated in two. If now, without violating the law requiring districts to be composed of contiguous territory, the two nearly solid Democratic counties can be formed into one district, that district will elect one senator by a very large majority; while in the remaining eight counties it may be possible to associate each Democratic county with a Republican county having only a slightly larger vote. Thus, in the ten counties so "gerrymandered," the six Democratic counties will be able to elect only one candidate, though the four Republican counties will elect four. Or, we may say, in the five districts the total Democratic majority of 2,500 elects one candidate, while the Republican minority elects four. By skillful application of such a plan to the various districts of a state, large party advantage may be gained. The system has been employed for manipulating election areas in cities in the interest of a party or of some special object.

The unfairness of the gerrymander has always been recognized, but all parties have been accused of its frequent use. A famous and flagrant instance is that of the "shoestring district" in Mississippi which included all the counties of the state bordering on the Mississippi River, a strip of land 500 miles long and 40 wide.

The principle of the gerrymander has been applied from very early times in American history, but the term came into use in the state of Massachusetts when Elbridge Gerry was governor. The state was being redistricted by the Democratic legislature, and the election areas were so grouped into districts as to enable the Democrats to elect a larger number of their candidates than was legitimately possible to the fairly counted party vote. One of the new districts presented in outline a grotesque figure likened by the artist Stuart to that of a salamander. "Say rather a Gerrymander" retorted the editor of the newly published political map of the state, playing upon the name of the Democratic governor who was unjustly believed to have favored the scheme.

See Apportionment; District System; State Legislature.

References: C. A. Beard, *Am. Government and Politics* (1910), 235–237; J. F. Jameson, *Essays in the Constitutional Hist. of the U. S.* (1889), 105; E. C. Griffith, *Rise of the Gerrymander* (1907); D. Humphreys, "Letter to Jefferson" in G. Bancroft, *Hist. of the Const.* (1882), II, 485. Jesse Macy.

GHENT, PEACE OF. The first step toward negotiations which ended in the Treaty of Ghent was taken in 1813 by Emperor Alexander of Russia. Madison accepted his offer of mediation and appointed Gallatin (Secretary of the Treasury) and Senator Bayard to join J. Q. Adams in negotiations. The British Government, although it declined this overture, declared itself ready to treat directly. Gallatin and Bayard, however, could not agree whether they were authorized to treat directly.

Receiving a friendly communication from Castlereagh, in 1814, the American Government enlarged the previous commission by the addition of Henry Clay (Speaker) and Jonathan Russell. Negotiations at Ghent began early in August, 1814.

The American instructions proposed the abandonment of impressment, a definition of blockade and other neutral and belligerent rights, the adjustment of certain claims of indemnity, and territorial *status quo*. The British instructions proposed complete English control of the lakes and a permanent Indian barrier. The British demands were considerably modified before successful negotiations appeared possible.

The American commissioners were embarrassed by the difficulty of communication with Washington, and by difficulty of agreement among themselves. The principal clashes were between Clay and Adams whose disagreements and altercations were partially counteracted by patient Gallatin, under whose lead the Americans finally agreed to sign a treaty applying the principles of *status quo* to most subjects of difference, containing no allusion to the American demands for which war had begun; and providing for peace with the Indians, suppression of the slave trade, and a commission of three to determine the boundary between the United States and Canada westward to the Lake of the Woods. The treaty was signed December 24, 1814, and unanimously ratified by the Senate on February 15, 1815; and has generally been considered a triumph of American diplomacy.

See Great Britain, Diplomatic Relations with; Impressment; Wars of the United States; Water Boundaries.

References: H. Adams, *United States* (1891), VII, chs. iv, xiv, IV, chs. i, ii, *Gallatin* (1879), Bk. IV, 493–553; J. Q. Adams, *Memoirs* (1874), II, III, chs. viii, ix; K. C. Babcock, *Rise of Am. Nationality* (1906), ch. x; J. M. Callahan, *Neutrality of Am. Lakes* (1898), 47–64; J. B. Moore, *Digest of Int. Law* (1906), V, 711; J. T. Morse, *J. Q. Adams* (1897), 74–98; James Schouler, *Hist of the U. S.* (1894), II, 477–85; C. Schurz, *Henry Clay* (1889), I, ch. vi; Edward Smith, *England and Am.* (1900), ch. xiv; J. A. Stevens, *Gallatin* (1898), ch. viii. J. M. Callahan.

GIBBONS vs. OGDEN. (1824, 9 *Wheaton* 1.) This leading case in the Supreme Court of the United States as to the extent of the power conferred by the Constitution on Congress to regulate commerce among the states is sufficiently stated in the article entitled Interstate Commerce and Cases.

E. McC.

GIDDINGS, JOSHUA R. Joshua R. Giddings (1795–1864), a native of Pennsylvania, was throughout almost the whole of his life a resident of the Western Reserve of Ohio. From 1831 to 1837 he was the law partner of Benjamin F. Wade, with whom, as a fearless exponent of abolitionism, he had much in common. From December, 1838, until March, 1859, he was a member of the National House of Representatives, originally as an independent Whig, later as a Free-Soiler, and eventually as a Republican. He admitted that slavery was a state institution, with which the Federal Government had no right to interfere; but, pursuing this logic, he maintained that slavery could not be made legal anywhere save by specific state enactment, that it therefore could not legally exist in the District of Columbia or in the territories, and that neither Congress, the federal executive, nor the federal courts might properly perform any act that could be interpreted to involve the recognition of slavery as a national institution. It was in the effort to enforce this last mentioned conviction that, during the controversy arising in connection with the Creole Case (*see*) of 1841, Giddings introduced in the House the memorable resolutions which led to his formal censure, his resignation, and his immediate and overwhelming reëlection. With the later development of the Republican party Giddings lost influence; in 1861 he accepted the post of consul general in Canada where he died in 1864. See Creole Case; Giddings' Resolutions; Ohio; Slavery Controversy. References: G. W. Julian, *Life of J. R. Giddings* (1892); H. G. Wheeler, *Hist. of Cong.* (1848), I, 267–327; W. Birney, *James G. Birney and his Times* (1890); J. R. Giddings, *A Hist. of the Rebellion* (1864), *Speeches in Cong.* (1853). F. A. O.

GIDDINGS' RESOLUTIONS. These famous resolutions were offered in the House of Representatives March 21, 1842, by Joshua R. Giddings, member of Congress from Ohio. They referred to the *Creole* case (*see*) and the claim of the United States Government for the return of the slaves who had risen on board the ship, taken possession of her and carried her into Nassau, an English port. Although these resolutions refer to slavery on the high seas, they are significant because they disclose the position that was to be taken a few years later by those denying the right of the central Government to recognize or protect slave property in the territories. By votes of 119 to 66 and of 125 to 64 the House passed a vote of censure on Giddings, who immediately resigned only to be triumphantly reëlected by his constituents. The resolutions, nine in number, declare that prior to the adoption of the Constitution each state controlled the subject of slavery within its limits, and that by the adoption of the Constitution the power was not surrendered to the Federal Government; that regulation of commerce on the high seas was transferred to the Federal Government; that slavery, being an abridgement of the national rights of

man, could exist only by force of municipal law and was confined to the territorial jurisdiction of the power creating it; that when a ship, belonging to a citizen of a state of the Union, is on the high seas, persons on board are not subject to the law of the state but of the United States and that therefore the persons on the *Creole*, amenable only to the law of the United States, violated no law in resuming their natural liberty; that attempts to reënslave such persons were illegal and incompatible with national honor; and that to countenance the coastwise slave trade or commerce in human beings was not authorized by the Constitution and was prejudicial to our national character. **See** GIDDINGS, JOSHUA R.; SLAVERY CONTROVERSY. **References:** W. McDonald, *Select Documents* (1911), 333–334; H. von Holst, *Constitutional History* (1881–1892), II, 479–486; G. W. Julian, *Life of Giddings* (1892). A. C. McL.

GIFTS FOR PUBLIC PURPOSES. In number and aggregate amount, American gifts for public purposes in the first decade of the twentieth century show unprecedented munificence. Stupendous material development, rapid creation of private fortunes, especially an accentuated sense of stewardship and public spirit are the main causes for these gifts. Such donations for public benefits tend to conciliate public sentiment towards concentration of wealth. The givers discriminate in the objects, methods and new uses of such gifts. They carefully investigate probable benefits and aim to stimulate self-help or the assistance of others towards the end sought. Notable new uses for benefactions are investigation of the causes of various diseases, such as cancer, hook-worm, maladies peculiar to children and women; agencies and facilities to combat tuberculosis; park and other "welfare" facilities.

The aggregate amount of gifts during the years 1903–07 exceeded eleven hundred million dollars. The amount, nature and general purposes of more recent benefactions are indicated in the table below. Benefactions for the years 1908, 1909, and 1910 were as follows (in thousands):

Year	Total	Gifts	Bequests	Charities	Educational Institutions	Religious Institutions	Art Galleries and Public Improvem'ts	Libraries
1910 --	$141,604	$97,492	$44,112	$56,229	$61,283	$12,654	$9,536	$1,911
1909 --	147,641	70,636	77,004	67,466	46,122	22,443	8,616	3,012
1908 --	90,032	43,559	47,372	39,729	36,552	4,413	9,401	834

The chief benefactors in recent years are Andrew Carnegie, John D. Rockefeller, and Mrs. Russel Sage, whose gifts to the end of 1910 are estimated respectively at 180, 135, and 22, million dollars.

See PARKS AND BOULEVARDS; PUBLIC BUILDINGS, NATIONAL, STATE AND MUNICIPAL; PUBLIC PROPERTY; REVENUE, PUBLIC, SOURCES OF.

References: Gifts amounting to $5,000 or over, as compiled by the *Chicago Tribune;* D. C. Gilman, "Five Great Gifts" in *Outlook*, LXXXVI (1907), 648–57; J. A. Hobson, "Millionaire Endowments" in *Littell's Living Age*, CCXLV (1905), 13–21; A. Carnegie, "Library Gift Business" in *Collier's Weekly*, XLIII (1909), 14–15. E. H. VICKERS.

GOLD BUGS. A nickname applied by the advocates of bimetalism in the "Free silver" campaign of 1896 to those favoring a single monetary standard based on gold. **See** GOLD DEMOCRATS; SILVER COINAGE CONTROVERSY. O. C. H.

GOLD CERTIFICATES. The first use of gold certificates issued against the deposit of gold coin and bullion was made in 1865, under the authority of an act of 1863. This law was repealed in 1878. July 12, 1882, their issue was again authorized, in denominations of $20 and over, to be suspended, however, when the gold reserve fell below $100,000,000. As a consequence but few were issued betwen 1893 and 1899. Since 1900, under the provisions of the gold standard act, they have been issued in larger volume; and as the act directs that one-fourth shall be in denominations of $50 or less, they are to be found in active circulation. An act of 1907 permits the use of denominations of $10. By act of March 2, 1911, certificates may be issued against bullion and foreign coin. This results in lessened coinage, since actual coin is necessary only when certificates are presented for redemption. These notes are not legal tender but are receivable for customs, taxes, and public dues. They serve public convenience, as abrasion of coin is saved, and there is less expense in transportation. **See** COINAGE AND SPECIE CURRENCY IN THE UNITED STATES; GOLD RESERVE; PAPER MONEY IN THE UNITED STATES. **Reference:** M. L. Muhlemann, *Monetary and Banking Systems of the U. S.* (1908).

DAVIS R. DEWEY.

GOLD COINAGE. **See** COINAGE AND SPECIE CURRENCY IN THE UNITED STATES.

GOLD DEMOCRATS. The passage of the silver purchase act of July 14, 1890, and the McKinley tariff act of the same year, was followed by a decline of revenue and general commercial disturbance, and a resulting drain of the gold reserve. The Republican national platform of 1892 endorsed the "double standard" of gold and silver. No Democrats had

voted for the silver purchase act of 1890, but the party in Congress was divided on the issue, and in 1892 the Democratic national platform advocated the free coinage of both gold and silver. At the beginning of Cleveland's second administration, in 1893, both Republicans and Democrats were divided on the question of the suspension of silver purchases. Later in the year, in consequence of the severe commercial panic, the "gold" or "sound money" Democrats joined with the "silver" Democrats in the House in repealing the act of 1890; but the "gold" Democrats were not in a majority in either house, and the vote on the repeal act of November 1—239 to 109 in the House, and 43 to 32 in the Senate—is not an accurate indication of the sound money following. The gold interests dominated the party in the East in 1896, but the free silver element got control of the Democratic national convention at Chicago, and nominated William J. Bryan on a free coinage platform. In September a convention of gold Democrats, representing forty-one states and three territories, met at Indianapolis, took the name of National Democratic Party, and nominated John M. Palmer of Illinois and Simon B. Buckner of Kentucky for President and Vice-President. The ticket polled a popular vote of 131,529. With the passage of the gold standard act of March 14, 1900, the activity of the gold Democrats terminated. See DEMOCRATIC PARTY; SILVER COINAGE CONTROVERSY. References: E. Stanwood, *Hist. of the Presidency* (1898), ch. xxxi; D. R. Dewey, *National Problems* (1907), chs. xvi, xx. W. MACD.

GOLD RESERVE. In accordance with authority granted by the resumption act of 1875 to restore the credit of Treasury notes, Secretary Sherman accumulated $140,000,000 in gold to support the credit of the $346,000,000 outstanding greenbacks. In the resumption act no definite amount was prescribed, but by Treasury practice, after resumption was accomplished, the sum of $100,000,000 was assumed as the necessary minimum limit. For fifteen years the gold service was ample to meet all demands made upon it; there was a succession of Treasury surpluses; and no demand for gold to settle international balances.

In 1890, however, a new burden was placed upon the reserve. The Sherman Silver Act called for the redemption of the new Treasury notes in "coin," and although, technically, redemption might be made in silver, the Treasury, in order to sustain public credit, undertook to redeem the new notes as well as the older greenbacks in gold. Foreign commerce and the unsettlement caused by banking difficulties in England led to the withdrawal of gold about this time. The decline in the gold reserve is seen in the following figures: 1890, $190,000,000; 1891, $118,000,000; 1892, $114,000,000; 1893, $95,000,000; 1894, $64,000,000.

To restore the reserve to a safe limit, the Sherman Act was repealed and bonds were sold for gold. Unfavorable conditions, and alarm over the possible substitution of silver for a gold standard, led to continued withdrawals, whereby the reserve repeatedly fell below the limit of assumed safety. In 1900, therefore, permanent provision was made to protect the integrity of the reserve; it was made a separate fund, entirely distinct from the general funds of the Treasury; the amount was raised to $150,000,000, and if it falls below $100,000,000, bonds are to be sold for the purchase of gold, without depending upon further legislation of Congress. Favorable financial conditions have not as yet (1914) required resort to this remedy. See GOLD CERTIFICATES; SILVER COINAGE CONTROVERSY; TREASURY NOTES. References: D. R. Dewey, *Financial Hist. of the U. S.* (1907), 440–50, 470; A. D. Noyes, *Thirty Years of Am. Finance* (1898), consult index; F. W. Taussig, "Treasury Condition in 1894–1896" in *Quar. Jour. Econ.*, XIII (1899), 204–218. DAVIS R. DEWEY.

GOMPERS, SAMUEL. Samuel Gompers (1850–), labor leader, was born at London, England, January 27, 1850. He learned the trade of cigar-maker, and early took part in the organized labor movement. He was one of the founders of the American Federation of Labor, in 1881, and from 1882 (with the exception of 1894) was its president, and editor of its official organ, the *American Federationist*. In 1908 he and two other officers of the Federation were adjudged guilty of contempt by the supreme court of the District of Columbia, on the ground of alleged violation of an injunction growing out of a boycott declared by the Federation against the Bucks Stove and Range Company. In 1909 the judgment was affirmed by the court of appeals of the District; but in May, 1911, the judgment of the court of appeals was reversed by the Supreme Court of the United States, and the case remanded to the District court. In 1912 Gompers was sentenced to imprisonment for one year, which sentence, though affirmed by the Court of Appeals, 1913, was reduced to thirty days. On appeal to the Supreme Court the case was dismissed under the statute of limitations. See GOVERNMENT BY INJUNCTION; INJUNCTION IN LABOR DISPUTES. References: *Am. Federationist* (1885 —); R. T. Ely, *Labor Movement in Am.* (rev. ed., 1902); J. Mitchell, *Organized Labor* (1903); *Am. Year Book, 1910*, 441; *ibid, 1911*, 351, and year by year. W. MACD.

GOOD BEHAVIOR OF PRISONERS. In nearly all states of the Union laws are established whereby prisoners serving a time sentence may secure a shortening of their term by a good conduct record. The reduction in the sentence usually ranges from a fourth to a third. Prisoners guilty of flagrant violations

of the rules lose their good time. In most prisons these deductions may be recovered wholly or in part by subsequent good conduct. Good conduct laws have exercised a great influence in the maintenance of good order in prisons. The love of liberty is a tremendous incentive to self-control, obedience and industry. The good time system has been criticised on the ground that it does not benefit the life prisoners, who constitute a considerable portion of the population of many prisons. The life prisoner, however, has an extraordinary incentive to good conduct, from the view that his only hope lies in the anticipation of a pardon which is likely to depend upon his good record. This incentive is usually quite as effective as the unwillingness to lose good time. See CRIMINAL, REFORMATION OF; INDETERMINATE SENTENCE; PAROLE SYSTEM; PRISONERS, PROBATION OF; REFORMATORIES. **References:** Am. Prison Assoc. (formerly Nat. Prison Assoc.), *Reports* (1870 to date); C. R. Henderson, *Penal and Reformatory Institutions* (1910); F. H. Wines, *Punishment and Reformation* (1910). H. H.

GOOD ENOUGH MORGAN TILL AFTER ELECTION. A statement attributed, in 1827 by the Rochester (N. Y.) *Daily Advertiser*, to Thurlow Weed (*see*), referring to a body found on the beach of Lake Ontario, claimed by the Anti-Mason propagandists to be that of William Morgan who in 1826 had mysteriously disappeared after having written a book purporting to reveal the secrets of freemasonry. See ANTI-MASONIC PARTY. O. C. H.

GOOD OFFICES AND MEDIATION. Definition.—"The phrase 'good offices' being somewhat elastic, it may be well to confine its use to the two contingencies in respect to which this Department [the United States Department of State] is careful to limit its employment. In its first sense, it corresponds to the French term *officieux*, or the Spanish *oficioso*, and means the unofficial advocacy of interests which the agent may properly represent, but which it may not be convenient to present and discuss on a full diplomatic footing. In its second sense it is allied to arbitral intermediation as an impartial adviser of both parties, and not only implies but requires the assent of both parties and oftener, a spontaneous invitation from each" (Secretary Hay in Moore's *Digest*, *see* References). The aim of the exercise of good offices is ordinarily to initiate negotiations between the states upon the subject of dispute. The carrying forward of the negotiations is in a strict sense the field of mediation, but in practice there is now little distinction in the use of these terms and they are joined in a single heading in the Hague Convention for the Pacific Settlement of International Disputes of 1907, under Title II, "On Good Offices and Mediation."

Process.—"In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers." Third powers may without offense tender good offices or mediation. "The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance." The parties at variance are not under any obligation to accept the means of settlement proposed by the mediator, or even to interrupt hostile preparations during the mediation. The Hague Convention recommends that a period not to exceed thirty days, unless otherwise stipulated, be allowed for mediation and that direct negotiations between the states be suspended during mediation.

The United States Government has frequently extended its good offices or mediation in order to settle disputes among South and Central American states. This mediation has extended to the settlement of financial claims, to the adjustment of difficulties threatening war and to the ending of war already begun.

Provision for resort to good officers and mediation was made in the Hague Convention for the Pacific Settlement of International Disputes in 1899 and 1907. The Secretary of State of the United States unofficially received delegates of the South African republics in 1900 during the South African War and in reply to their request that the United States "intervene in the interests of peace" the Secretary said that the President of the United States, in endeavoring to avert the war by representations to Great Britain, seemed "to have gone to the extreme limit permitted to him."

Instances.—On June 18, 1905, the President proposed to Russia and Japan that they endeavor to reach an agreement to end the Russo-Japanese war. His proposition was accepted and in the Peace of Portsmouth of September 5, 1905, the terms of settlement were fixed.

See ARBITRATION AND PEACE; HAGUE TRIBUNAL; MEDIATION; NEUTRALITY, PRINCIPLES OF; WAR, INTERNATIONAL RELATIONS OF.

References: S. Takahashi, *Int. Law as Applied to the Russio-Japanese War* (1809), 774; J. B. Moore, *Digest of Int. Law* (1906), VII, 3–34; A. P. Higgin, *Hague Peace Conferences* (1909), 103; J. B. Scott, *Texts of the Peace Conferences at the Hague* (1908), 157.

GEORGE G. WILSON.

GOOD ROADS MOVEMENT. Making and improvement of roads dates back to local colonial authority, in days when the principal roads led to the churches and court houses. After the Revolutionary War the need of roads became more apparent and was met first by turnpike companies then by federal expenditures (*see* CUMBERLAND ROAD) to accommodate western travel. Few public highways were

well surveyed, well surfaced or had proper grades. A general movement for good roads began about 1890. Travellers to Europe brought home tales of the permanent and smooth roads there. The usual argument was the economic results to the farmer; but a new impetus was given by the advent of automobiles which quickly wore out poor roads. The manufacturers of automobiles added their forces to those of the users. The result was a movement which has set in motion three agencies, national, state and local.

Federal.—The Department of Agriculture at Washington maintains an Office of Public Roads with a director and several assistants. Congress makes an appropriation of more than $150,000 per year to carry on the work of this office. The main purpose is educational; bulletins, circulars and reports are issued, giving the results of the investigations carried on by the office. Materials are tested, sample roads are built in various states, with careful records of the cost and material. The office is collecting a valuable library on the good roads movement. It sends lecturers to every state, and gives exhibitions in road making at state fairs. In Congress bills have been proposed looking toward a union of federal and state action in the construction of roads.

State Administration.—The state is the centre of the good roads movement, because it is chiefly by state action that the roads must be constructed, repaired, and administered. New Jersey, in 1891, began with an appropriation of $75,000 for roads, to be used in conjunction with local funds. The appropriations in that state have been largely increased, and a state commissioner of public roads has been set up in Massachusetts, and Connecticut; and New York has established a state highway department.

That state in 1905 authorized the issue of fifty million dollars in bonds for road building. The state is divided into six divisions for purposes of road administration, with a skilled engineer for each district. The main roads are under state construction and repair; and the branch roads are built jointly by state and local governments. The voters of Ohio, in 1912, voted down an amendment to the constitution authorizing a bond issue of fifty million dollars for good roads, one-tenth of which was to have been spent each year. The highway commissioner of Ohio has taken up a plan of mapping the roads of the state, showing the amount of traffic over each road indicated. The roads most used are to receive whatever aid the state gives for road-making. Illinois has a state crushing plant, operated by convict labor. In many states convicts are used on road work. State aid and state supervision, or both, are elements in the good roads movement.

Local.—The local governments have, in general, failed in road making principally because of the wasteful system of working out the road tax. Ohio continued it until prohibited by an amendment to the constitution in 1912. The unit of administration by the local government is too small. Recent tendencies are toward state administration.

See Automobile Regulation; Bridges, Public; Highway Commissioner, State; Pavements; Roads; Streets.

References: Department of Agriculture, *Annual Reports;* L. W. Page, "Progress and Present Status of the Good Roads' Movement in the United States" in *Year Book of Department of Agriculture* (1910), 265–274; F. J. Stimson, *Federal and State Constitutions* (1908), Bk. III, §§ 395, 409. Thomas N. Hoover.

GOO GOOS. A term applied in derision to participants in the good government club movement which started in New York City about 1894. O. C. H.

G. O. P. A derisive abbreviation given by the Democrats to the expression "Grand Old Party" applied to the Republican party by the Republican campaign orators about 1880. The abbreviation was immediately given general currency by the newspaper press and has continued to be used as a nickname for the Republican party (*see*). O. C. H.

GOTHENBURG SYSTEM. The Gothenburg "bolag" or company system for the sale of liquor, originated in Gothenburg, Sweden, in 1865 and since generally adopted throughout Sweden and Norway ("Samlag," law of 1871), consists in that the sale of liquors, except beer and wine, is taken over by a private company of reputable citizens who subscribe the necessary capital, and are pledged to carry on the traffic as a matter of public welfare, reserving to themselves an ordinary rate of interest on the capital invested, while all profits beyond this accrue to the local community or the state. The advantages claimed for the company system are that it: (1) eleminates private profit from the sale of a dangerous commodity; (2) makes law enforcement easy; (3) facilitates progressive reform, such as a reduction of places where liquor may be obtained, a reduction of hours of sale, and the establishment of counter-attractions to the dramshop. The cardinal difference between the Swedish and Norwegian systems lies in the methods of distributing the large profits. In Sweden these have been applied extensively to the reduction of the local rates, but in Norway they are appropriated chiefly to a national fund, and to objects of public utility not supported by the rates, thus eliminating a very natural tendency to push sales. In both countries the consumption of distilled liquors has been greatly reduced under the company system. See Drunkenness, Regulation of; Liquor Legislation; Liquor Licenses; Liq-

UOR, STATE DISPENSARY FOR. **References:** Committee of Fifty, *Liquor Problem in its Legislative Aspects* (1898), 140–180; Joseph Rowntree and Arthur Sherwell, *Temperance Problem and Social Reform* (1900), ch. vii. J. K.

GOVERNMENT. Government in the primary sense is the official combination of those persons within a state who are legally empowered to carry out the public purposes of the community. The despotic chief of a savage tribe, the citizens of a little republic acting *en masse*, or the imperial Bundesrath and Reichstag of Germany with the commonwealth and local authorities within the empire, all equally form genuine governments. In a larger sense, government is not only the organization of persons, but all the official acts of the various members of the organization. Thus a sidewalk ordinance, an act creating a street railway commission, and a treaty made by the President and Senate of the United States, are all government, in the sense of the application of public powers. **See** GOVERNMENT, THEORY OF; INDIVIDUALISM, THEORY OF; POLITICAL SCIENCE; POPULAR GOVERNMENT; REPRESENTATIVE GOVERNMENT. **References:** J. W. Garner, *Intro. to Pol. Sci.* (1910), index government; A. B. Hart, *Actual Government* (rev. ed., 1908), ch. iii. A. B. H.

GOVERNMENT, THE. The term commonly applied to the United States Government in such phrases as government service, government contracts, government engineers, government clerks. It is never used, standing alone, as denoting state or local authorities or affairs. **See** CABINET; EXECUTIVE AND CONGRESS; EXECUTIVE POWER, THEORY OF; FEDERAL STATE; LAW, ADMINISTRATIVE. A. B. H.

GOVERNMENT BY INJUNCTION. This phrase sprang into common use shortly after the Pullman Riots of 1893, and is not illogical as applied to the interference of state courts by contempt process, or still more to the interference of federal courts when carried out by federal officers or even by the Army, in matters ordinarily concerning private relations or the public peace. Accordingly, some states are attempting by legislation to limit the issuance of injunctions and to prescribe the penalty and procedure in cases of contempt. Such statutes have been challenged on constitutional grounds; the proposed acts of Congress face the difficulty that the federal courts possess all the powers of the English court of chancery at the time of the adoption of our Constitution; the same objection may apply in states where the state constitution establishes chancery courts.

Despite the continuous agitation on this subject, it is probable that there has not been abuse of the writ of injunction, though when the discovery was first made that this effective process might be used in large matters, or in labor disputes involving large bodies of men, this great arm of the court of equity was more carelessly wielded and in some instances, it enjoined all mankind from doing certain things, possibly criminal in themselves, and thus supplanted the ordinary peace authorities; in a western railroad case, workmen were enjoined from leaving their employment; in a Virginia mining case, employees were enjoined from assembling or walking peaceably upon the public highway. Nevertheless, as has recently been decided in the Bucks Stove and Range case, the fact that an act is lawful, or the right to perform it even constitutional, as in the case of free locomotion, freedom of speech or freedom to publish, does not, necessarily, prevent its being enjoined if part of a conspiracy.

In the platform of the National Progressive party, drawn up at the Chicago convention in August, 1912, is found the following:

> We believe that the issuance of injunctions in cases arising out of labor disputes should be prohibited where such injunctions would not apply when no labor disputes existed."

The Democratic National Convention at Baltimore in June, 1912, called attention, in its platform, to the fact that the Democratic House "has passed a bill to prevent the abuse of the writ of injunction."

See COURTS, FEDERAL; INJUNCTION; WRITS.

References: *Senate Reports*, 57 Cong., 1 Sess. (1902), No. 190, 1114; *In re* Debs, 158 *U. S.* 564; G. G. Groat, "Injunctions in Labor Disputes" in *Pol. Sci. Quart.*, XXIII (1908), 408–439; W. H. Taft, *Presidential Addresses and State Papers* (1910), 146–163.

FREDERIC J. STIMSON.

GOVERNMENT PRINTING OFFICE. From 1789 to 1860 Congress made provision for the public printing by a system of contracts with private printers, but so much scandal was caused and so many disputes arose between the two houses that in 1860 Congress appropriated $135,000 for the purchase of an existing plant in Washington, and thus committed the government to the policy of doing its own printing which it has followed over since. At the head of the office is the Public Printer who is appointed by the President. He appoints all his subordinate officers, is responsible for the purchase of all supplies, and disburses all the money which is appropriated for this office. The enormous expense and evident waste in connection with the printing and distribution of public documents led, in 1906, to an elaborate investigation by a committee of Congress, which showed that the work done for the Government in its own printing office costs much more than if done by private printers, and that large sums are spent annually for the printing of documents which are never called for and are ultimately destroyed or sold to junk-dealers. The Government Printing Office is by

far the largest printing establishment in the world, and its plant could not be duplicated for less than $10,000,000. See PUBLICATIONS, GOVERNMENTAL. **References:** Congressional Printing Investigation Commission, *Report* (1906); W. S. Rossiter, "The Problem of Federal Printing" in *Atlantic Monthly*, XCVI (1905), 331. L. B. E.

GOVERNMENT, THEORY OF

Method.—Any sound theory of government must rest upon an examination of the concrete historical facts relating to the origin and development of the state in each of the several countries of the world. All mere abstract views on the subject are now generally discounted by scholars. The work of historians, like Stubbs, and lawyers like Pollock and Maitland, are held in higher esteem by students of government than the treatises of Locke, Rousseau, Bentham and Mill. It is recognized to-day that political theories are born of time and circumstance rather than of pure reason, and that the surest way of arriving at sound notions concerning government is to examine, not only the forms of government in their historical development, but also the forces, social and economic, which have largely determined the process of government. The older views that government originated in a social contract among free individuals or in a divine plan, although still accepted in some quarters and occasionally expounded in judicial decisions, are no longer held by critical scholars of constitutional law. The method of approach to government is now purely historical and pragmatic; it consists in a study of the concrete governing process as it exists in separate countries.

The Origin of Government.—By this method the conclusion has been reached that two prime factors entered into the origination of government. It is generally agreed that man is not by nature a political animal, if we are to derive our notion of what is "natural" from a study of the most primitive types of mankind. Long before there was any organized and permanent form of government, primitive men lived in loosely organized bands, coöperating for immediate sustentation, dissolving and reintegrating largely under the pressure of external environment. Political authority, in a form akin to that known in modern times, first appeared after the establishment of property in domestic animals and the consequent foundation of permanent marriage and slavery and patriarchal dominion. The patriarchal system, under which were evolved tribes and clans, developed many forms and varieties of government and law, both before and after the adoption of agriculture. Some time after the settlement of patriarchal groups upon the soil a new political feature entered: the old tribal and clan settlements were conquered and welded together by wandering war bands whose leaders became kings. Thus the state, in the modern sense, involving the exercise of political power over a considerable population occupying a definite territorial area, was born of conquest. The innumerable petty kings created in the earlier expeditions were reduced in number by a process of natural selection—warfare among themselves—until there emerged in western Europe a relatively small number of states, ruled by kings or persons bearing other titles of rank. Though the modern national state was born of conquest and the drilling and disciplining of subject populations, military force and royal dominion were not the sole factors. Older tribal and patriarchal institutions were by no means entirely destroyed, although the elements of exclusiveness, tribal religion and communalism were broken down as royal authority advanced, and brought all men and all institutions under its sway.

The habits of submission to authority inculcated under the patriarchal system were favorable to the maintenance of royal authority when once established. And the Christian church, coming to the support of kings, powerfully aided in fixing in the minds of the populace reverence and respect for "the powers that be." In the modern theory of government, therefore, kings are not regarded as historical anomalies but as the founders of modern states, who welded together contending populations, drilled and disciplined them, and made possible settled, orderly, civilized life on a large scale. That the process of government has been a cruel one no one can doubt; but it has been the process by which contending congeries of barbarians have been reduced to a relatively small number of states—preparatory possibly to that larger "world-state" which philosophers believe is in the making.

Rise of Popular Control.—The evolution of government was just begun when royal authority was established. By the subjugation of feudal nobles, the construction of royal highways, the adoption of royal coinage, the extension of royal authority, settled peace was brought to large areas and considerable populations, so that commerce, science, and the arts could flourish. Under these circumstances new groups began to spring up in society in opposition to the older military and agricultural classes. A merchant group was born; and, with the discovery of the routes to the new world and markets in the four corners of the earth, this merchant class increased in wealth

and numerical strength, and in the several states its members drew together under the influence of a consciousness of identical interests. In time, in coöperation with the agricultural elements of the population the commercial class organized opposition to absolute monarchy and standardized that monarchy according to certain rules or constitutional principles, safeguarding life and property against arbitrary royal authority. Circumstances favored the developement of this organized opposition in England earlier than in France or in other nations on the continent. The monarchy was earlier consolidated there—the English Channel, by making more difficult inroads from neighboring war bands, facilitated the cultivation of the arts of peace, and the ease with which Tudor monarchs bent representative government to subserviency, prevented, in England, the destruction of the representative principle which had appeared quite generally all over western Europe during the Middle Ages (*see* REPRESENTATIVE GOVERNMENT).

England thus became the model for the reintroduction of representative government which accompanied the rise of the middle class to power on the continent during the 18th and 19th centuries. Government in those centuries became constitutional and representative, that, is, royal authority, out of which the state and government had sprung, was everywhere curbed by principles and practices protecting life and property from arbitrary interference. Provision was made for the maintenance of these principles by the establishment of legislatures composed of delegates representing more or less widespread classes of the people. In this course of evolution *forms* of government have been differentiated more or less according to the intensity and nature of the conflict out of which they have been born. In England, for example, the monarchy and the House of Lords survived the tide of modern democracy largely because they relinquished their ancient claims to dominion. In France, on the other hand, the monarchy and the aristocracy were both destroyed.

The evolution of government did not cease with the destruction or standardization of the monarchy. Neither did the institutions evolved under the monarchy perish. Trial by jury, one of the most famous products of the royal inquisition, survived in England, and is highly cherished by democracy everywhere; and the centralized system of Louis XIV, rather than the doctrines of the revolutionists, lies at the base of French national administration today. The foundations of American institutions rest upon principles evolved under the monarchy in England. Governors, councils, legislatures, judicial systems, municipal and local governments in colonial times found prototypes in principles and practices in English institutions. Some of these American institutions trace their origin back into the earliest period of English history. Others originated as royal authority was extended, or was controlled and directed by the rise of social groups whose interests conflicted with the exercise of arbitrary power.

Theory a Form of Moral Justification.—But the process of government did not end with the establishment of constitutional safeguards against royal absolutism. About the same time that the middle class began to contend with the monarchy and feudal aristocracy for political dominion, a new class was born with the industrial revolution—the working classes of industrial centres. This new group asserted its right to share in political powers through an extension of the suffrage; and by agitation, sometimes a show of violence, and the rivalry between political parties, control of government was widened out until it became vested practically in the adult males of each nation. Out of patriarchal dominion, military conquest and subjugation, and the rise of the classes and their struggle for power, modern governments have taken their form, and out of the conflicts which have created modern government have been evolved our theories of government. The supporters of the Stuarts in England and Louis XIV in France, and, in fact, monarchs everywhere, evolved and developed the divine right theory of government: the powers that be are ordaine of God; all power is in the monarch; the king is the state; and if he share any of his dominion it is merely to secure the advice of his subjects. English statutes to-day run "Be it enacted by the King's most gracious Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons in Parliament assembled;" and English coins bear the words *dei gratia rex.*

In opposition to this theory of divine right the great champions of popular control evolved their theory that government originated in a contract among free men, and its principles are founded in natural rights. Both these theories are merely the philosophic defences of the two contending interests out of which modern government was evolved. When once popular control was established by the formation of representative institutions, and, the triumph of constitutional principles, and the more or less wide diffusion of the suffrage, interest in governmental theories no longer centered principally in the forms and structure of government, but rather in the functions of government. Writers of the middle class origin and sympathies, like Adam Smith and Herbert Spencer, seeing the unbounded enterprise and skill of the capitalist classes, evolved the doctrine of *laissez faire:* the functions of the government should be reduced to the minimum. Writers of feudal origin and sympathies, like the Cameralists of Germany, and Ruskin and Carlyle in England, formulated and developed a paternalistic theory of government; rulers should use their power benevolently to improve the lot of

their subjects. Writers of working class origin and sympathies evolved the socialist theory of government; the government should be used as an instrument for the collective ownership and administration of all the means of production for the benefit of the working class. The scientific student of government no longer dogmatizes as to the functions of government, because he realizes that they depend not upon any abstract theories as to the nature or justification of government, but rather upon the organization and pressure of interests within the state. Government ownership of railways, in Germany, for instance, does not rest upon any theories of paternalism, but rather upon the practical exigencies of military defence. Manufacturers in England, owing to their strategic position in controlling the markets, in the middle of the nineteenth century declared it was not a proper function of the government to protect manufacturing or agricultural interests; but manufacturers in the United States, under other circumstances, claim that this is a proper function of the government.

Undoubtedly, however, the old doctrine of *laissez faire*, which viewed the government as a sort of police constable, whose functions were confined to keeping peace among the contending inhabitants, is generally abandoned, and the government is coming to be viewed more and more as an agent of the people in the execution of schemes for public welfare. Public highways, public education, public health, and a large variety of undertakings designed to improve the physical and moral condition of the population are now being undertaken by governments everywhere. Thus an instrumentality born of conquest and subjugation has become an instrument of democratic service, and it is in this that it finds its moral and philosophic justification in our day.

See Democracy; Representative Government; Social Compact Theory; Organization; State Socialism; State, Theory of.

References: E. Jenks, *History of Politics* (1900); A. F. Bentley, *Process of Gov.* (1909); J. W. Garner, *Introduc. to Pol. Science* (1910), ch. ix; H. Spencer, *Principles of Sociology* (1893), Pt. V; H. Sidgwick, *Principles of Politics* (1891).

Charles A. Beard.

GOVERNOR OF THE STATE

State Executive.—In American government the term governor is distinctively applied to the chief executives of the several states of the United States of America. Prior to their national independence it denoted the chief executive of each of the colonies, either appointed by the British Crown, or by the proprietor or—as in the case of Connecticut and Rhode Island, and of Massachusetts till it lost its charter, in 1684—chosen by the freemen of the colony. The governor is now in each state a constitutional official, elected at large by the qualified voters of each state. His functions and powers are determined by the state constitution and cannot be abridged nor taken away from him except by due constitutional amendment. The several legislatures, from time to time, also impose on him as executive the appointment of various officials created by them, and the execution of various provisions of law enacted to meet the needs of the public welfare. In some states there is elected on the same ballot with him a lieutenant-governor who takes his place in case of death, inability, or absence, but has few other functions; sometimes, however, as in New York, he presides over the senate or upper branch of the legislature.

Council.—In a few of the older states there is also associated with the governor an executive council, composed of some five or eight members, each elected by popular vote from one of the several large councillor districts into which the state is divided. Their function is advisory. In Massachusetts their approval of the governor's appointments is required. They visit state institutions with him. He refers to them the preliminary examination of applications for pardon. Prior to the institution of the office of state auditor, they audited the state accounts of receipts and payments. Warrants on the treasury for the payment of state expenditures are issued by them.

The pardoning power is lodged in the governor's hands. In a few New England states he cannot exercise it except with the concurrence of the executive council, but in most states, as in the Federal Government, it is vested solely in the chief executive.

Appointments.—In a word, the governor is the chief executive of the state. But the tendency has been to narrow more and more the limits of his executive power and to impose on various commissions, the appointment of which is lodged with him, the supervision and control of various departments of the public service—railroads, water supply, lighting, highways, charitable institutions, etc. He is still commander-in-chief of the military forces of the state, and has the appointment of his military staff, but usually the other officers of the militia are now elected by vote from within the various military lines. In Massachusetts, as in some other states, he at first appointed all judges, sheriffs, clerks of courts, registers of probate, and the attorney general, but now in that state none of these are left to his ap-

pointment except the judges, popular election having by constitutional amendment been adopted as to the rest. In most of the states all these officials, including the judges, are elected by popular vote; but in a few the governor still appoints them, sometimes for a term of years, sometimes—as in Massachusetts—for life, or during good behavior.

Relation to Legislation.—The governor has some direct participation in legislation. He is authorized to call the legislature together for other than its regular sessions. He communicates to it and urges on its consideration his views on matters of public policy and recommends general and specific legislation. Except in the state of North Carolina he also has the power of vetoing any enactment of the legislature except an amendment to the state constitution, with no limitation of his power in this respect except that he return it to the legislature with a statement of his objections to it. And his veto absolutely defeats it unless, as is usually provided, each branch of the legislature passes it again by a two-thirds vote. In that case it becomes a law without his approval or signature; while all legislative acts approved by him receive his signature.

Administrative Powers.—The powers of the governor are, therefore, not so much in his defined constitutional lines as in the moral atmosphere and prestige of his office. The mayor of a metropolitan city is a busier and more heavily burdened official. But the governor's office in the popular impression is of the highest dignity in the state. It is an ancient and honorable office, which has been clothed with the veneration of centuries. The governor, on all public occasions, is the first citizen of the state, the representative of its political, civil and military authority. His position as chief executive, his power of appointment to office and, in many cases, of removal, his command of the public ear, his prominence in the public eye, his environment of officials and staff, and his relation to the legislature give him an influence in shaping its legislation altogether beyond the limitations of his strict constitutional range. In national affairs he is a natural exponent of his state, and expresses and enforces by his utterances its views, demands and judgment. In other words, the opportunity is open to a governor to be a leader of the people as well as a perfunctory official. Especially is this true in time of crisis, under the impendence of vital questions of public policy, of war—civil or foreign—of domestic or local riot, or of some great humanitarian exigency.

The title of governor, in American government, is also that of the executive officers appointed by the President to administer the affairs of our territories, or of acquired possessions like Porto Rico. The duties of such an officer are prescribed by the federal statutes and performed under the direction of the President. He is removable at the pleasure of the President, and his status is, of course, very different from that of the governor of a state of the Union.

See APPOINTMENTS TO OFFICE; EXECUTIVE AND EXECUTIVE REFORM; HOUSE OF GOVERNORS; MESSAGES, EXECUTIVE; PROCLAMATIONS, EXECUTIVE; REMOVAL OF PUBLIC OFFICIALS; STATE DEPARTMENTS, HEADS OF; STATE EXECUTIVE; VETO POWER.

References: J. H. Finley and J. F. Sanderson *Am. Executive and Executive Methods* (1908); J. Bryce, *Am. Commonwealth* (rev. ed., 1910), I, ch. xli; A. B. Hart, *Actual Government* (1909), ch. viii; C. A. Beard, *Am. Government and Politics* (1910), ch. xxiv; P. L. Reinsch, *Readings on Am. State Government* (1911), 1–40; E. B. Greene, *Provincial Governor* (1898); F. J. Stimson, *Comparative Administrative Law* (1893), I, 74–82; J. A. Fairlie, "The State Governor" in *Mich. Law Rev.*, X (1912).

JOHN D. LONG.

GOVERNORS, CONFERENCE OF. The conference of governors had its origin in the administration of President Roosevelt, who, in May, 1908, called a meeting of governors at the White House, to advise with him in the problems relating to the conservation of natural resources. A plan for further meetings of governors, was presented by Governor Willson of Kentucky, and advocated on the ground that such a meeting would tend toward more uniform legislation.

A second meeting was held at Washington, in January, 1909, to consider many problems that came under state administration, and are beyond the limits of the national jurisdiction. Among these are the questions of marriage and divorce, extradition, child labor, capital punishment, prison problems, initiative, referendum and recall, intrastate commerce, etc.

A third conference was held at Frankfort, Kentucky, in 1910. The importance of teamplay, and getting together was evidenced in this conference.

Perhaps the most important conference yet held was the one held at Spring Lake, New Jersey, in 1911. The power of states over intrastate commerce was one of the leading points under discussion. The special occasion for this was the decision by Justice Sanborn, of the United States court of appeals, in the Minnesota Railway commission injunction case, to the effect that the state commission could not regulate certain rates of intrastate commerce, because of the effect such regulation might have in interstate commerce. The doctrine of state sovereignty over such questions was maintained, and a committee of three governors, with Governor Harmon, of Ohio, at the head, was selected to protest against the above decision before the Supreme Court. The conference was also used by some governors to further their chances in the approaching

presidential campaign. Some local conferences have also been held such as a meeting of western governors in July, 1912. Conferences were held at Richmond, Va., and Washington, D. C., in 1912; and at Colorado Springs in 1913.

See COMITY, INTERNATIONAL AND STATE; GOVERNOR; HOUSE OF GOVERNORS; STATE EXECUTIVE; UNIFORM STATE LEGISLATION.

References: E. F. Baldwin, "The Gathering of the Governors" in *Outlook*, XCIX (1911), 162-166.

THOMAS N. HOOVER.

GRADE CROSSINGS ELIMINATION. Methods.—Methods of separating the grade of a railroad from the grade of a street may be classified as follows: (1) elevation or depression of the street with no change in the grade of the railroad: (2) partial elevation or depression of the railroad combined with the partial depression or elevation of the street; (3) complete elevation or depression of the railroad with no change in the grade of the street. It is of the utmost importance that the problems of grade separation should not be taken up piecemeal. It sometimes happens that the need for grade separation is first realized with reference to some one important crossing in the business district. The danger is that this crossing will be considered by itself and that a method of elimination will be adopted that will condition or hamper all future grade separation work. The importance of first adopting a general plan covering all the crossings within a particular area can not be over emphasized. Of the three methods above referred to that of complete elevation or depression of the railroad with a minimum change in the grade of the street is undoubtedly the ideal method. It secures a perfect roadbed for railroad operation with a minimum of interference with the streets.

The advantage to the public of grade separation is very great. Besides the vexatious interference with street traffic in 1908, 832 persons were killed and 1,755 injured at grade crossings in the United States. The total amount of time lost at grade crossings by pedestrians, vehicles and street cars is in some cases enormous. Separation of grades is also of great benefit and sometimes practically indispensable to the railroad which is thus relieved of the cost of warning signs, bells and signals, the maintenance of gates and the employment of flagmen. The railroad is also relieved of a large expense due to personal injury claims; and complete elevation or depression of the tracks makes it possible to deal with the trespass nuisance from which the railroad suffers enormous loss and damage. The most potent incentive from the standpoint of the railroad, however, is the increased speed and freedom of operation which is possible where grades have been separated. This factor has doubtless led roads like the Pennsylvania to expend large sums in grade crossing elimination on certain of their more congested divisions. Moreover, to a railroad that finds its chief field of usefulness and profit in the development of a suburban rapid transit service, grade separation is a necessity.

Cost.—The cost of eliminating grade crossings has sometimes been paid entirely by the railroad but more often has been borne partly by the railroad, partly by the city and in some cases partly by the state and by the street railroad company using the crossing. In Massachusetts, the railroad pays 65 per cent of the cost, the city not more than 10 per cent, the street railway company using the crossing not exceeding 15 per cent and the state the remainder. Unless a street railway is involved the state's proportion is 25 per cent. State aid laws also exist in Vermont, and New York. In Chicago, where extensive grade separation improvements have been made, the railroad is required to bear the entire cost of track elevation including the cost of bridges and the reconstruction of the streets; while the city pays only the property damages which are in most cases very small. In Connecticut, under a law passed in 1889, each railroad is practically required to eliminate at its own expense one grade crossing each year for every sixty miles of road owned or operated. The United States Supreme Court has upheld the exercise under the police power of the right to compel grade separation at the entire expense of the railroad (N. Y. and N. E. R. R. Co. *vs.* Bristol, 151 *U. S.* 556; N. P. R. Co. *vs.* Minnesota, 208 *U. S.* 583).

See ACCIDENTS, RAILROAD AND STEAMSHIP; BRIDGES, PUBLIC; RAILROAD COMMISSIONS, STATE; RAILROAD ESTABLISHMENT AND MANAGEMENT; RAILROADS, REGULATION OF; STREETS; TRANSPORTATION, REGULATION OF.

References: E. M. Bassett, "Report on Grade Crossings" in New York Public Service Commission for the First District, *Third Annual Report*, I (1909), 279; R. H. Whitten, "Methods of Railway and Street Grade Separation in Cities" in *Engineering and Contracting*, XXXVI (1911), 442–45.

ROBERT H. WHITTEN.

GRADUATED INCOME TAX. See TAX, INCOME, GRADUATED.

GRADUATED LANDS. The act of August 4, 1854 (repealed June 2, 1862), graduated the price of public lands which had been in the market over ten years. The benefit of the act could only be secured by actual settlers or those who desired to obtain land adjoining their farms. The graduation extended, in five year periods, from ten to thirty years. At the end of the former period the price was $1.00 an acre, and this fell until, after thirty years, it reached twelve and a half cents. See LAND OFFICE; PUBLIC LANDS. Reference: T.

Donaldson, "Public Domain" in Commission of Public Lands, *Annual Reports* (1884).

P. J. T.

GRAFT. A slang expression, borrowed from the under world of crime, first appearing in its political signification in Chicago early in the last decade of the nineteenth century, signifying money or other valuable considerations extorted from the public without adequate service or legal sanction. It applies to money or concessions extorted from public officials, public funds embezzled by them, and compensation for permitting law-breaking. See CORRUPTION.

O. C. H.

GRAMMAR SCHOOLS AND THE GRADES. See SCHOOLS, GRAMMAR AND THE GRADES.

GRAND COMMITTEE. This name has commonly been applied to committees of one from each state, and dates from the Federal Convention where such a committee was formed to adjust the controversies over representation; and from it came the Connecticut compromise (*see*). In the midst of the Missouri trouble of 1820, a grand committee was raised from which proceeded the first Missouri compromise (*see*). In 1850, Senator Foote proposed a similar committee; but instead, a committee of 13 was created in the Senate. In the crisis of 1860, a Senate committee of 13 and a House committee of 33 (one from each state) attempted vainly to frame some compromise. Since that time the states have been too numerous to make such a committee practicable. See COMPROMISE OF 1850; COMPROMISES, PROPOSED, 1860–1861; CONSTITUTION OF THE UNITED STATES, COMPROMISES OF; MISSOURI COMPROMISE. **References:** J. Schouler, *Hist. of the U. S.* (1904), III, 163, V. 169; A. C. McLaughlin, *Confederation and Constitution* (1905), 201–220, 234–235.

A. B. H.

GRAND JURY. See JURY, GRAND.

GRAND LIST. Name applied to the enrollment of listed property, including real and personal. In some states this is called the tax duplicate. See ASSESSMENT OF TAXES.

D. R. D.

GRANDFATHER CLAUSE. A clause in the constitutions of several of the southern states which secures the disfranchisement of the majority of negro voters by means of an educational qualification, while the white illiterate voter is exempted from the operation of the law by the provision that the law should not apply to any one whose father or grandfather had been a voter before 1867. See FIFTEENTH AMENDMENT; NEGRO SUFFRAGE.

O. C. H.

GRANDFATHER'S HAT. A tall hat of the style of 1840 worn in the Harrison campaign of 1888, representing that of Benjamin Harrison's grandfather, William Henry Harrison (*see*). It was sometimes used to create enthusiasm by recalling the stirring scenes of the Log Cabin and Hard Cider campaign (*see*). It was also used by his opponents as a term of derision, intimating that Benjamin Harrison (*see*) was over-shadowed by his grandfather's reputation or was seeking to make use of it.

O. C. H.

GRANGE. See GRANGERS.

GRANGER CASES. A group of cases decided in the Supreme Court of the United States in 1876 relating to the legislative regulation by the states of railroad rates is often designated as the "Granger Cases," that term being used by way of general description in the dissenting opinion, for the reason that the legislation regulating railroad rates in Iowa, Minnesota, and Wisconsin, the validity of which was directly involved, had been to a considerable extent secured through agitation carried on in Granges (*see*), that is, voluntary associations of farmers designed to further their interests, the members of which were called Grangers (*see*). The cases in which opinions were handed down were Chicago, B. & Q. R. Co. *vs.* Iowa (94 *U. S.* 155) and Peik *vs.* Chicago & N. W. R. Co. (94 *U. S.* 164). They involved the constitutionality of state legislation fixing maximum rates for the transportation by railroads of freight and passengers, the contention of the railroads being that such statutes impaired their charter rights, deprived them of the beneficial use of their property without due process of law (*see*), and that they also infringed the power conferred on Congress by the Constitution to regulate commerce. The court briefly reannounced the principle elaborated in another case decided at the same term (*see* MUNN *vs.* ILLINOIS) that railroad companies being carriers for hire and therefore engaged in a public employment affecting the public interest are subject to legislative control as to their rates, and held that: (1) the charters of the companies, containing no specific provision as to rates other than that they might demand and receive such rates as they should deem reasonable, would not constitute contracts limiting the power of the state to regulate such rates (*see* CONTRACT, IMPAIRMENT OF); (2) the exercise of their public callings subjected the companies to legislative regulation of rates in the exercise of the police power, and such regulation would not deprive them of property without due process of law, the power to regulate being essentially legislative and not judicial (such regulation however being subject to the limitation announced in subsequent cases that a reasonable rate of profit on the property employed can not be denied) (*see* PRICES AND CHARGES); (3) state statutes ap-

plicable to rates to be charged within a state do not infringe the powers of Congress under the commerce clause relating to interstate commerce so long as Congress has not legislated upon the subject. On this last point it was later held that state legislation as to rates did not apply to interstate commerce. See INTERSTATE COMMERCE AND CASES; TRANSPORTATION, REGULATION OF; PRICES AND CHARGES; PUBLIC USE. E. McC.

GRANGERS. A name applied to the members of the Grange, or the Order of the Patrons of Husbandry, a secret fraternal order founded in Washington, December, 1867, by O. H. Kelly, a clerk in the Department of Agriculture. Under his leadership an organization was begun in Washington, with provision for state and local lodges. Women were to be admitted on equal terms with men, though membership was to be limited to those engaged in agriculture. The original design was chiefly educational and social—to gather into one fraternal organization the masses of the farmers; to develop themselves and their homes; to reduce expenses by coöperation; to diversify and to produce more crops; to "discourage the credit system, the mortgage system, the fashion system and every other system tending to prodigality and bankruptcy." Kelly resigned his office in Washington and gave his life to organizing Granges in the west, unselfishly suffering financial sacrifices and hardships. The order grew slowly until 1873, when the first national Grange convention was held in Georgetown, D. C. From 1872 to 1875 was a period of remarkable growth, 13,000 subordinate Granges being organized in 1873 alone, while by 1875 the total membership reached 1,500,000. This growth was promoted by the discontent and hard times following the panic of 1873.

Although professedly non-partisan and non-political, the Granger movement had a decided influence in the elections of 1874 and 1875 and led to "Granger legislation" and promoted the growth of the Greenback party (*see*). The Grangers first sought mutual control of agricultural industrial agencies, like flour mills, elevators, tobacco and grain warehouses and coöperative stores. In legislation they demanded reasonable railway rates and the prevention of extortion by the private control of terminal facilities and shipping agencies. The movement was influential in bringing about the court decisions in the "Granger Cases" (*see*), vindicating the right of public control of public utilities; in securing the passage of the Inter-State Commerce (*see*) Act, as, also, in later years, in promoting pure food legislation in state and nation. In politics the force of the Granger movement is to be traced in the growth of the Farmers Alliance (*see*) and the Populist party (*see*). While the political activities and influences of the Grange have declined in recent years, its educational and mutual benefits have continued. It has provided for mutual fire insurance and for coöperative buying, and has taken the lead in farmers' educational meetings.

Although economic features are strong, yet the real basis of the Grange is its educational and social work. It becomes rooted in family and neighborhood life, and represents a real social power in the regions in which it is well established. Buildings erected purposely for Grange halls are common. The basis of membership is that the applicant shall be directly interested in agricultural affairs. The unit of organization is the local or subordinate grange, representing a small farming community. This has the power to confer certain degrees. The county, or pomona grange, meeting less frequently, is made up of the local granges within its territory and it confers other degrees. The state grange, meeting annually, is composed of delegates; and the national grange, also a delegate body, has final jurisdiction on questions of policy and procedure. The grange is a powerful support to the movement for education for country life and for the proper recognition of the farmer as a man and a citizen.

See FARMERS' ALLIANCE; FARMERS' ASSOCIATIONS.

References: J. R. Commons and others, *History of Am. Industrial Society* (1909), IX; S. J. Buck, "Independent Parties in Western States" in *Turner Essays in Am. Hist.* (1910), ch. vi; *Outlook*, LX; *Forum*, XXXI; *Arena*, XXXIX; E. W. Martin (Pseud. for J. D. M. Cobb), *History of the Grange Movement* (1874). J. A. WOODBURN.

GRANT, ULYSSES SIMPSON. Ulysses S. Grant (1822–1885), eighteenth President of the United States, was born at Point Pleasant, Ohio, April 27, 1822. He graduated from West Point in 1843, and served with distinction in the Mexican War. He resigned from the Army in 1854, and until the outbreak of the Civil War was engaged in business. In 1861 he enlisted as a volunteer, and was soon appointed brigadier-general. In 1862 he was appointed major-general. Until 1864 he served in the West; he was then, March 2, appointed lieutenant-general with command of all the military forces of the United States. July 25, 1866, Congress conferred upon him the rank of general. He cherished no resentment towards the South, and while holding aloof from political parties, used his great influence to bring about a return to normal conditions. From August 12, 1867, to January 13, 1868, he held the office of Secretary of War in place of Edwin M. Stanton, whom Johnson had suspended. In 1868 he was nominated for the presidency by the Republicans, and elected, receiving 214 electoral votes against 80 for Horatio Seymour, his Democratic opponent. In

1872 he was reëlected, receiving 286 out of 366 electoral votes. His influence on legislation during his presidency was due to his immense popularity as a soldier rather than to his ability as a politician or a statesman; and while his administrations were full of important legislation, they were also clouded by revelations of widespread corruption in civil life, and by many unfit appointments. He had little sympathy with the policy of upholding Republican governments in the South by the aid of federal troops, and gradually withdrew most of the troops during his second term. In 1880, after a notable trip around the world, he was again brought forward for the presidency, and in the Republican convention he received a vote, for 36 ballots, which varied from 302 to 313. He died at Mt. MacGregor, near Saratoga, N. Y., July 23, 1885. See PRESIDENT, AUTHORITY AND INFLUENCE OF; RECONSTRUCTION; WARS OF THE UNITED STATES. References: U. S. Grant, *Personal Memoirs* (rev. ed., 1885); J. G. Wilson, *Life of U. S. Grant* (1897); A. Badeau, *Military Hist. of U. S. Grant* (1868), *Grant in Peace* (1887); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), III–VII; W. A. Dunning, *Reconstruction* (1907). W. MACD.

GRAY, GEORGE. George Gray (1840—) was born at New Castle, Del., May 4, 1840. He was admitted to the bar in 1863, and until 1869 practiced at New Castle, but thereafter made his home at Wilmington. From 1879 to 1885 he was attorney general of Delaware, and was then elected to the United States Senate, where he served one term. He was a delegate to the Democratic national conventions of 1876, 1880, and 1884. In the presidential campaign of 1896 he adhered to the gold standard wing of the Democrats, and throughout his political career was recognized as one of the conservative leaders of his party. In 1898 he was a member of the Spanish-American peace commission; and in the same year served on the Anglo-American high commission at Quebec. In 1899 he was appointed United States circuit judge for the third circuit, and in 1900 was designated a member of the permanent court of arbitration at The Hague. Both of these positions he still holds (1913). He was chairman of the anthracite coal commission in 1902.

W. MACD.

GREASER. A term of contempt, applied to a Mexican of the lowest type. T. N. H.

GREAT BRITAIN, DIPLOMATIC RELATIONS WITH

The foreign policy of every state will be dictated by its interests, for altruism in the sense of preferring the good of some other people to its own would be a betrayal of trust by the government. This policy may be a long enduring, continuous thing like Russian expansion or Pan-Germanism; or it may be opportunism, to defend a right or meet a crisis. The permanent foreign interests of the United States, roughly speaking, have involved: (1) furtherance of trade and neutrality; (2) territorial adjustment and expansion; (3) exclusion of European interference on the American hemisphere. To these may be added, (4) care for New England's fishery interests. These four threads are traceable through our relations with Great Britain and can best be treated topically but must be preceded by a brief statement of the beginning of diplomatic relations with Great Britain.

Treaty of Peace (1782).—The negotiation of 1782 was a veritable triumph for the new republic, a triumph, too against the secret influences of France and Spain. Recognition of independence was a prerequisite. The questions most disputed related to boundaries, fisheries and the confiscated estates of the loyalists. As for limits, Spain desired our exclusion from the Mississippi, while England wished the land east of the Penobscot with which to compensate loyalists.

Both claims were resisted, and a generous share in the northern fisheries was obtained (*See* FISHERIES). As for the loyalists, owing to the loose union of states under the Articles of Confederation, Congress could only agree to recommend to the states an illusory restitution under conditions. But further confiscation was forbidden and the recovery of debts facilitated.

Allegiance.—As in the fisheries and in commerce, the relations between the two countries were much disturbed by long disagreements on the right of impressment and search. There was nothing wrong in a British naval draft law, but the attempt to enforce it upon foreign ships at sea, that is outside of British jurisdiction, was illegal, whether in time of peace or of war. It was also exasperating. It culminated in an attack upon the United States ship of war, Chesapeake, by the Leopard searching for British deserters. The British claim to search American ships at sea in time of peace on suspicion of slave trading, without treaty warrant, was not surrendered until 1859.

The British Naturalization Act of 1870 ended the doctrine of indefeasible allegiance and brought English usage into conformity with our own as to a five year residence qualification. This stopped one cause of controversy. Another lay in the occasional lapse of extradition which, originating in Jay's Treaty, and restated in 1842, had been vitiated by the Extradition Act of 1870. This forbade surrender

for political offenses; required assurance that only the alleged crime would be charged, and reserved priority of punishment for an offense against English law. Our extradition agreement of 1889 with Great Britain conformed to this Act and ended a sporadic difficulty.

Commerce.—The trade relations with Great Britain for a century and a quarter have been, to both, all important. Breadstuffs, cotton and tobacco exported; manufactures and use of capital returned; identity of language and of commercial law—these were so many grappling hooks to bind the two together.

Along with the treaty of peace in 1782, a treaty of commerce with Great Britain was solicited. This proved unattainable. The restrictions of the colonial system were too strong. The West Indian trade was closed against the ships of the United States. Partly in retaliation, British ships were excluded from our coasting trade and tea imported in them had to pay a special import. No treaty of commerce was made until 1794 (*see* JAY TREATY). By 1793, the trade interrupted by the Revolution had revived. Should it be jeopardized by making common cause with France in her struggle? This danger was avoided by the adoption of a policy of neutrality (*see* NEUTRALITY PROCLAMATION).

The years from 1793 to 1812 are marked by the painful effort of the United States to perform its neutral duties and particularly to maintain its neutral rights. Its breadstuffs were declared contraband; seamen were pressed out of its ships on the high seas; blockades far more extensive than the facts warranted shut them out from continental and West Indian ports; all sorts of hampering orders, decrees and confiscations interfered with them. Nevertheless, our trade throve largely, such was the virtue of the neutral attitude. Our commercial tonnage was greater in those years than in 1830, after years of prosperity (*see* NEUTRAL TRADE). After the War of 1812 came the development of the Middle West with its increase of agricultural wealth. Meanwhile the cotton staple of the South had proved the basis of great manufacturing development in Lancashire. Interruption of this cotton and provision trade would have been truly disastrous, for the United States would have gone bankrupt while Great Britain would have starved.

The results of the blockade of the cotton ports, 1861–1865, are a slight foretaste of what war at any time might have brought about. Solid indeed is the foundation upon which the commercial relations of the two countries have been built, and American diplomacy has recognized and sanctified the bond in treaties of amity and commerce with Great Britain as follows: 1794, (Arts. III, XIV, XV); 1815, (Arts. I, II, III); 1827, continuing the agreement of 1815 for ten years and indefinitely thereafter unless denounced—under this treaty the two countries are now (1913) acting; 1854, securing ten years of partial reciprocity with Canada; 1871, Canadian fisheries and trade, lasting for twelve years. Freedom of approach and intercourse and the most favored nation treatment characterize these treaties. So far as has been feasible, the United States, in the definitions of naval prize law, in the rules governing the carrying trade in war, and in the strict regulation of neutral duties, has shown itself convinced that its dominant interests are those of a neutral, not those of a belligerent. The sole exception to this policy was the refusal of Marcy to adhere, in 1856, to the Declaration of Paris, which was in effect a bill of neutral rights; for the refusal the excuse was that it did not go far enough, the State Department undertaking that if the Powers would agree to exempt all private property at sea (even enemy's) from capture, the United States would accede and surrender its right to increase its naval power through privateering (*see* DECLARATION OF PARIS).

Territorial Adjustment and Expansion.—The geographical ignorance of the framers of the treaty of 1783 led to many subsequent difficulties. First, there was doubt as to the identity of the St. Croix river, which was the first link of boundary in the northeast. By Article V of the treaty of 1794, this question was referred to a commission, an early instance of international arbitration. This commission reported, in 1798, that the most western of the two streams called St. Croix was the boundary river of the treaty as claimed by Great Britain. But there had also been controversy as to which of the two branches of this St. Croix was the main stream, and here the claim of the United States was sustained in favor of the Northern or Schoodic confluent.

From the source of the Schoodic the next section of the boundary was by treaty to run due north to certain highlands "which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean." If by highlands was meant a mountain range, exploration showed that there was none; if a water-shed was intended, each country contended for a different one, Great Britain for that between Penobscot and St. John waters, the United States for that which divides the St. Lawrence river tributaries from all others. This difference was referred to a commission of two by the treaty of Ghent in 1814, with arbitration to fall back upon. As the commission was a failure and grave disorder threatened in this vast disputed territory, the alternative of arbitration was resorted to in 1827. The arbitrator, the King of the Netherlands suggested a compromise, that the St. John river be the boundary. Since nothing was clearer than that a river was not the highlands called for by the treaty, the United States rejected the award, and the *status quo* returned. Disputes and disorder

became serious after that, and the squabble of state with province is dignified by the name of the Aroostook War. The settlement came in 1842 (*see* ASHBURTON TREATY) and was a compromise almost precisely on the lines recommended in 1831 by the Dutch sovereign (*see* NORTHEASTERN BOUNDARY CONTROVERSY).

A boundary controversy of importance arose on that line which was to run from the "most northwestern point" of the Lake of the Woods due west to the Mississippi river. Since the head of the Mississippi proved to be to the south of the Lake of the Woods, the question arose, whether the rectified line should run from the Lake of the Woods to the nearest source of the Mississippi, as the United States contended, or should quite a new boundary be laid down, due west from the western end of Lake Superior, which was the British suggestion. Article V of the Treaty of 1803 embodied the American claim, when news of the Louisiana Purchase put a new face on affairs, and the agreement failed of ratification because Louisiana's northern limit was somehow supposed to be the parallel of forty-nine, which was more favorable than the 1803 line. The line of the 49th parallel was accepted by Great Britain, but where should it end? Great Britain preferred to insert the uncertain statement that it should run as far west as the territories of the United States extended; but this was feared as allowing a future claim that British colonies might cut off our westward expansion. Therefore, in 1818, the "Stony (Rocky) Mountains" were accepted as the western limit, but with the proviso that the region beyond the mountains should for ten years be open to both parties without prejudice. And in 1827 this arrangement was extended. After 1840 there came into the Oregon (*see*) country a rapid influx of American farmers who fairly outsettled their rivals; and by treaty, in 1846, the 49th parallel as boundary was extended "to the middle of the channel which separates the continent from Vancouver's Island," and southerly through this channel to the Pacific, with use in common of the Columbia and its portages, thus completing the boundary from ocean to ocean.

This, however, was not the end of the controversy; for instead of one channel out to the straits, the archipelago, including the island of San Juan, is traversed by two navigable channels, the Canal de Haro on the west, Rosario Strait on the east. Each nation laid claim to that channel which served its interests, and the island of San Juan was occupied by small military contingents of the two parties. In a final arbitration under the Treaty of Washington in 1871, the American view was sustained, presumably on the ground that the 49° boundary had stopped short of the ocean only to avoid cutting the great island of Vancouver in two; and that the concession of the United States in British favor should be strictly construed (*see* NORTHWESTERN BOUNDARY CONTROVERSY).

A third boundary quarrel arose over Alaska. When Russia sold her American possessions to the United States in 1867, it was, of course, subject to treaty provision as to boundaries made with Great Britain in 1825. No serious question was raised as to this line until after the discovery of gold in the upper Yukon Valley, which was British but was accessible only across American soil and by an American port. Could not, at least, one of the deep fjords indenting the coast be claimed as British? The treaty language carried the line from the intersection of Portland Canal with 56° "along the summit of the mountains parallel with the coast" to the neighborhood of Mount St. Elias; then along the 141° of west longitude to the Arctic Ocean; but whenever the summit of these mountains was more than ten marine leagues from the ocean, the line was to deviate and lie parallel to the windings of the coast a similar distance from it. Were islands off the continent a part outside "the coast?" Were fjords a part of the ocean? Should the line be conventional or actually follow all sinuosities? Upon these questions depended the treatment of the Klondike traffic and they became pressing. The steps in the process of settlement were: (1) 1892, a convention to mark the boundary; (2) 1894, an extension of the above; (3) 1899, a provisional boundary on the Klondike route at the top of the White and Chilkoot passes; (4) 1903, reference of the dispute to a commission of six jurists of repute, three from each country. By the vote of a British judge, Lord Alverstone, the claim of the United States was ratified. A less important point, relating to the southern beginning of the line was decided in British favor (*see* ALASKA BOUNDARY CONTROVERSY).

Exclusion of European Interests.—The "hands off" policy addressed to European powers including Great Britain is based in terms upon the right of self-defense (*see* MONROE DOCTRINE). It has never been applied to British territory in North America; but the status of the Hawaiian Islands in 1842, Texas in 1843, Cuba in 1852 and Venezuela in 1895, all aroused that jealousy of British influence which earlier set the Monroe Doctrine in motion. This same principle dictated the Clayton-Bulwer treaty in 1850, to prevent exclusive British control of a future canal across Central America. The abrogation of the Clayton-Bulwer treaty (*see* HAY-PAUNCEFOTE TREATY) by mutual consent, the spirit of goodwill between the two countries, England's phlegmatic acceptance of our Monroe Doctrine whatever it may mean, all these influences seem to remove that Doctrine from our category of disturbing factors so far as concerns Great Britain; but historically it has had to be taken into account by her and has somewhat limited her action in America.

Fisheries.—In the colonial period, in the negotiation of peace in 1782, and ever since, the fisheries along the coasts of the British maritime provinces and islands have been a source of discord. The high sea fishery belongs to all nations in common, but needs bait; while the fish within the territorial waters of the provinces have been a temptation to fishermen from farther south. The treaty of peace in 1783 sharply distinguished these two classes of fishery, recognizing existing rights in the one and granting them in the other. This grant by Great Britain was surprisingly liberal, for it opened all the coastal waters of the provinces except a portion of Newfoundland. After the War of 1812, England claimed that this grant had been terminated by the fact of war, our own claim being that, like independence and boundaries recognized by the same treaty, it was perpetual. The treaty of 1818 was, however, substantially in line with the British contention, limiting the coastal fisheries open to the United States to Labrador, certain parts of Newfoundland and the Magdalen Islands. It was perpetual in terms. The principal inshore fish is mackerel, and it is chiefly upon mackerel that the disputes of the thirty-six ensuing years centered. Our smacks occasionally poached, smuggled, crowded the native boats away from their stations, tore nets, choked fish by throwing 'gurry' overboard, or enticed fish over the three-mile limit. These abuses were met by stricter policing by the British colonial governments, by prosecutions, captures and by wider interpretation of the meaning of territorial waters. Meanwhile the provinces were excluded from our market by tariffs on fish. The reciprocity treaty of 1854 balanced these two coveted privileges, opening all British American waters to our smacks, and our markets to their fish free of import duty. Dissatisfaction with this treaty on our part, led to an interregnum of a few years and then to its renewal in 1871 in a new form; a commission was to strike a cash balance between the two privileges—free fishing and free imports. The award, in 1877, was $5,500,000 against the United States. Since the expiration of that treaty, in 1883, the agreement of 1818 has governed, with such interpretation of our rights under it as diplomacy, local statutes and the useful arbitration of 1910, have furnished (*see* Newfoundland Fisheries Dispute). A later phase of this question of fisheries was begun in 1886, when three vessels of British register were seized by the United States for catching seals on the high seas. The root of the trouble was a question of jurisdiction. Had the United States a right, based upon its exclusive control of Bering Sea or upon a property in the Pribilof seals, to protect them at sea without treaty? This issue was decided at Paris in 1893 by arbitration against us. Since then international agreement has endeavored to preserve seal life.

Arbitration.—More frequently, perhaps, than any other two countries, Great Britain and the United States have had recourse to arbitration to settle their differences. Several of these cases have been above referred to. It is not strange that both countries should have desired upon this usage to erect a treaty compact of arbitration, of the widest possible scope and working automatically. One such proposed in 1897, ingeniously provided either settlement or delay, but failed in the Senate. Another even more comprehensive was considered in 1912. Whether or not one can discern in such machinery the assurance of perpetual peace, it has at least a sentimental value as reflecting the close friendship of the two people, a friendship based upon identity of blood and language, literature and law, above all upon trade, a friendship which in the main their diplomacy has mightily aided.

See Alabama Controversy; Alaska Boundary Controversy; Arbitrations, American; Canal Diplomacy; Clayton-Bulwer Treaty; Colonial International Relations; Declaration of Paris; Diplomacy and Diplomatic Usage; Foreign Policy of the United States; Geneva Arbitration; Halifax Commission and Award; Impressment; Mare Clausum; Monroe Doctrine; Mosquito Question; McLeod Case; Navigation of International Rivers; Negotiation of Treaties by the United States; Neutrality, Principles of; Newfoundland Fisheries Dispute; Northeastern Boundary Controversy; "Once an Englishman Always an Englishman"; Orders in Council; Privateers; Ratification of Treaties by the United States; Reciprocity Policy; Seal Fisheries; Three-Mile Limit; Trent Affair; War Power, Constitutional.

References: A. B. Hart, *Foundations of Am. For. Policy* (1901); J. B. Moore, *Hist. of Internat. Arbitrations of the U. S.* (1898), *Digest of Int. Law* (1910), *Am. Foreign Policy* (1909); F. Snow, *Treaties and Topics in Am. Diplomacy* (1894); W. Wilson, *Hist. of Am. People* (1902); J. D. Richardson, *Messages and Papers of the Presidents* (1896); J. W. Foster, *A Century of Am. Diplomacy* (1900); M. Bernard, *Neutrality of Great Britain* (1870); W. E. Hall, *International Law* (1909); Historicus, *Leters to the London Times* (1863); Treaties and Conventions of the U. S. A.; "Foreign Relations, 1789–1828" in *American State Papers* (in progress).

Theodore Salisbury Woolsey.

GREAT COMMONER. A sobriquet of Henry Clay (*see*) given because of his "defence of popular rights and the indignant denunciation of aristocratical tyranny." O. C. H.

GREEK FEDERATIONS. The attempt to secure the advantages arising from numbers, without sacrificing wholly the independent

action incident to sovereignty, early led to a form of government which occupies a position intermediate between a unitary state on the one hand and a mere league of states on the other. This kind of combination is of very ancient origin and is found in varying degrees of completeness. It was not the product of deliberate purpose, but the result, rather, of bitter experience. Better was it for several small states to give up part of their rights in order to retain the rest, than to hold fast to their individual powers and risk them all. Pressed by the larger states about them, the Greeks were forced into political union. In what order this form of mutual coöperation organized itself, and what are the dates of these confederate systems are not accurately known. The chief governments of Greece thus entering into relationship with each other were, in the order of their developement, the following: Thessaly, Boeotia, Acarnania, Olynthus, Arcadia, Aetolia, Achaea, and Lycia. Among these nations, it was Aetolia and Achaea which carried out the confederate idea most thoroughly and consistently. Lycia stands alone as an instance of "a very perfect Hellenic system evolved by a non-Hellenic race."

The Aetolian assembly, like a modern parliament, was a permanently representative body, in which, however, although the voting capacity of the states was fixed, every individual citizen of the league had the right to deliberate and to vote if he chose to attend. He voted with the councillor from his home state, the vote counting only one in determining the decision of the state itself. The assembly may also have possessed executive authority and a certain amount of administrative power. The assembly had one regular meeting each year for the election of magistrates. Matters touching the exercise of sovereign powers were concluded at special meetings. A *Strategos*, or general, was also annually elected, who possessed both civil and military powers and who commanded the forces in the field. The *Nomographoi*, whose duty consisted in revising the laws and in having the custody of public documents, completed the personnel of the league's officers. In the Achaean League the constitution was formed strictly along the lines of a true confederation, the constitutent states being sovereign in all matter which did not pertain to common purposes. The assembly met twice a year regularly, with special meetings as required. The League also had authority to levy contribution on the several members. The *Strategos* was assisted in his civil functions by ten ministers known as *demiurgoi*.

See Confederation; Federal State; Sovereignty, Theory of; States, Classification of.

References: T. D. Woolsey, *Pol. Sci.* (1889), II, 175–194; A. H. J. Greenidge, *Handbook of Greek Constitutional Hist.* (1896), 220–243; E. A. Freeman, *Hist. of Federal Government* (1893). Burt Estes Howard.

GREELEY, HORACE. Horace Greeley (1811–1872) was born at Amherst, N. H., February 3, 1811. In 1834 he became editor of the *New Yorker*, a weekly literary paper, and in 1838 of the *Jeffersonian*, a political weekly published at Albany, N. Y. In 1840 he took charge of the *Log-Cabin*, in which he supported Harrison. The next year he established the daily New York *Tribune*, later adding the *Weekly Tribune*, formed by merging the *New Yorker* and the *Log-Cabin*. After the formation of the Republican party, the *Tribune* became its leading organ; and through its columns Greely, notwithstanding a feud with Thurlow Weed, long exercised a controlling national influence. In the Republican national convention of 1860 he opposed the nomination of Seward, and was slow to accept the leadership of Lincoln. In 1861 he sought the Republican nomination for the United States Senate, but was defeated; and in 1869 was unsuccessful as a candidate for comptroller of New York, and in 1870 as a candidate for Congress. In 1872 he was nominated for President by the Liberal Republicans and Democrats, and received 2,834,079 votes out of a total of 6,467,073. He died at Pleasantville, N. Y., November 29, 1872, before the electors had voted; and three votes cast for him were rejected by Congress. He wrote *The American Conflict* (1864–66). See Presidential Elections; Republican Party. References: W. A. Linn, *Horace Greeley* (1903); W. Reid, *Memorial of Horace Greeley* (1873); Thurlow Weed, *Autobiography* (1884); J. F. Rhodes, *History of the U. S.* (1893–1905), II–VI. W. MacD.

GREENBACK LABOR PARTY. In 1878 a national convention of the Greenback party, held at Toledo, Ohio, was attended by a number of leaders interested in organized labor. The strikes and labor troubles of 1877, had emphasized industrial issues in which manufacturing and railway labor was interested, and purely financial questions were not so prominent as they had been prior to 1876. Congress had decided to retain the greenbacks as part of the paper currency of the country, and partial remonetization of silver had been secured by the Bland-Allison Act of 1878. As questions of labor and capital, more than those of the currency, were attracting the attention of the country, the Toledo convention changed the name of the party to the Greenback Labor Party, by which it was known in the campaigns of 1880 and 1884. In the congressional elections of 1878, the party attracted the support of nearly a million voters in the rural sections of the West and among industrial workers in the East, and it elected fourteen members of Congress. In 1888 its

members, who had not returned to their old parties, merged with the Union Labor Party (*see*), and later with the Populists. See GREENBACK PARTY; LABOR PARTIES; LEGAL TENDER CONTROVERSY; PAPER MONEY IN UNITED STATES. References: J. A. Woodburn, *Political Parties and Party Problems* (1903), 100–119; T. H. McKee, *National Conventions and Platforms* (1901). J. A. W.

GREENBACK PARTY. The first national convention of the Greenback party, or "Independent National Party," was held in Indianapolis, on May 18, 1876. Peter Cooper, of New York, the philanthropist, was nominated for President. The party had its origin in the financial legislation growing out of the Civil War. It was deemed necessary during that struggle to issue Treasury notes or greenbacks, as a means of securing money to conduct the war. This was done by the famous Legal Tender Act of February, 1862, and the notes were increased by later acts. After the war, Hugh McCulloch, Secretary of the Treasury, began the policy of contracting, or retiring, this currency with a view to restoring the business of the country to the specie basis. The policy of the Treasury was to convert the non-interest bearing greenbacks into interest bearing bonds and to substitute bank notes for the greenbacks in the paper currency of the country. This policy aroused strong popular opposition. This opposition, voiced in Congress by Republicans like Oliver P. Morton (*see*), Thaddeus Stevens (*see*), William D. Kelly and Benjamin F. Butler (*see*), and by Democrats like Pendleton, Hendricks, and Voorhees, made known to the country the cause that marks the beginning of the Greenback party. Its principles on money and paper currency had been announced in the platforms of the National Labor Union in 1866 and 1868, and by the Labor Reform party in 1872 (*see* LABOR PARTIES). From 1867 there was a constant struggle, in and out of Congress, to save and to increase the greenbacks on the one hand, and, on the other hand, to destroy these notes and allow the notes of the national banks to take their place. The Greenbackers held that the latter policy would leave the currency of the country at the mercy of the banks; that the greenbacks should be looked upon, not as an obligation to be paid off or converted into bonds, but as good, lawful, constitutional money—the "people's money"—better than bank notes since they were circulating without interest burden to the Government and were secured by the same Government credit as the bank currency; that if they were to be regarded as debt they were, in any case, the least burdensome of all the forms of the public indebtedness and they believed that the withdrawal of the greenbacks would not only cripple industry but add to the burden of all the debts of the people. The Greenbackers opposed the payment of gold on bonds that by the terms of the contract were payable in "lawful money," such as the greenbacks were; they held that gold payments on the bonds multiplied profits to bankers and bondholders, and with the accompanying contraction would crush the life out of legitimate business and industry. The panic of 1873 and the resulting hard times gave an impetus to popular discontent with the "hard money" policy and helped on the Greenback cause. The "soft money," or greenback, sentiment in Congress urged the indefinite postponement of specie resumption and the increase of the greenback currency, which resulted in the "Inflation Bill" of 1874, which Grant vetoed.

The party had its chief strength in the West, in farming and debtor communities. In 1876 its convention declared in favor of the immediate repeal of the specie resumption act, and in favor of United States notes issued directly by the Government and convertible on demand into United States bonds bearing a rate of interest not to exceed 3.65 per cent, thus repeating the demand of the Labor Reform party of 1872. Such notes should be a legal tender for all debts except such as by existing contracts were payable in coin. The Greenbackers believed in "fiat money" only in the sense of believing that money is the creature of law, not of nature or of custom. They held that paper money, limited in supply, put forth by a financially responsible government with the unlimited power of taxation, made receivable for all debts public and private without exception—that such a money would be the best and most rational that could be devised.

The party cast 81,000 votes for Cooper in 1876. In 1880 having changed its name to the Greenback Labor Party (*see*) it nominated James B. Weaver, of Iowa, for President. In this campaign the party advanced new proposals on industrial questions, in the interest of labor—for an eight-hour law; for inspection of mines, factories and workshops; against gigantic land grants to railroads and corporations; for the regulation of interstate commerce; for a graduated income tax—and they denounced all tendencies toward depriving the people of direct power over their government. In 1884 the party cast 183,824 votes for Benjamin F. Butler, of Massachusetts for President and in its platform it claimed to be the chief agency in saving the greenback from destruction, in causing the partial remonetization of silver in 1878, and in securing from the United States Supreme Court a decision (1884) "establishing forever the right of the people to issue their own money." In 1888 the independent Greenbackers merged with the labor parties of that year and their party passed into history.

See LABOR PARTIES; LEGAL TENDER CONTROVERSY; PAPER MONEY IN UNITED STATES.

References: J. A. Woodburn, *Political Parties and Party Problems* (1905); E. Stanwood,

Hist. of the Presidency (1898); J. C. Zanchos, Ed., *Political and Financial Opinions of Peter Cooper* (1877). J. A. WOODBURN.

GREENBACKS. Name applied to the legal tender notes issued under the act of 1863, so designated on account of the color of the notes on the reverse side. Inflationists who desired to increase the volume of Government paper money later organized in the Greenback Labor party. See LEGAL TENDER CONTROVERSY; PAPER MONEY IN THE UNITED STATES; TREASURY NOTES. D. R. D.

GRESHAM'S LAW. A principle which is commonly stated in the phrase "bad money drives out good." When coin is worth more as bullion than it is as currency, it is naturally exported, hoarded or used, as bullion might be. This general principle is operative even where the same metal is concerned, and not two metals; for example, exporters of coin select the full weight ones for exportation and leave those which by wear have fallen below weight. The law receives its name from Sir Thomas Gresham who is said to have explained the principle to Queen Elizabeth. The principle, however, had long been recognized. See BIMETALLISM; COINAGE; MONEY. References: J. F. Johnson, *Money and Currency* (1905), 194–6; H. White, *Money and Banking* (4th ed., 1911), 25. A. C. McL.

GRINGO. A term of contempt, applied to Anglo-Saxons by Spanish-Americans. T. N. H.

GROTIUS, POLITICAL THEORIES OF. See POLITICAL THEORIES OF CONTINENTAL PUBLICISTS.

GROUND RENTS. See RENT; TAX, SINGLE; UNEARNED INCREMENT.

GUADALUPE HIDALGO, TREATY OF. The treaty terminating the war between the United States and Mexico, signed in the City of Mexico Feb. 2, 1848, ratified by the Senate March 10, 1848. The negotiation of this treaty was one of the most curious episodes in the diplomatic history of the United States. N. P. Trist, Chief Clerk of the State Department (at that time there were no Assistant Secretaries of State) was made commissioner, with instructions to insist on the Rio Grande boundary, New Mexico and California. Arriving at the American lines, General Scott refused to facilitate his communications with the Mexican Government; when he came into relation by other routes, his terms were refused. His recall was sent from Washington, but he ignored this communication and proceeded to make a treaty substantially on the basis of his instructions. Meanwhile in Washington the annexation of the whole of Mexico was put forward and received powerful support. President Polk was furious at Trist's insubordination; but accepted the treaty because substantially in accordance with his instructions and promises to the public. The treaty involved the payment of $15,000,000, apparently as an inducement to Mexican diplomats. See BOUNDARIES OF THE U. S., INTERIOR; GADSDEN PURCHASE; MEXICO, DIPLOMATIC RELATIONS WITH; NEGOTIATIONS OF TREATIES BY THE UNITED STATES; PEACE, CONCLUSION OF; TEXAS. References: Jesse Reeves, *Am. Diplomacy under Tyler and Polk* (1907), ch. xiii; E. G. Bourne, *Essays in Historical Criticism* (1901), No. 9; J. B. Moore, *Digest of Int. Law* (1906), I. 458, 639, 730, V, 780. A. B. H.

GUAM. Guam, the largest of the Mariana or Ladrone Islands, was ceded to the United States by Spain in 1898. Situated about 1,450 miles east of Manila, it is the only island in that part of the Pacific which possesses both a good harbor and a constant supply of drinking water. It has a naval station and an important cable depot. It is about 32 miles long by 6 or 7 wide, has a tropical vegetation and an equable climate but is subject to typhoons and earthquakes. The population is 12,517 (1912) all but about 370 natives; these are of a mixed Indonesian stock, with a civilization similar to that of the Filipinos. The capital, Agaña, has 8,000 inhabitants, which include nearly all the white population.

The status of Guam has never been fixed by Congress: by order of the President it is controlled by the Navy Department. The governor, who is also commandant of the naval station, has "practically the power of a benevolent despot over an absolutely helpless people." He is assisted by American and native officials. There are three grades of courts, most of the judges being natives. All expenses, except for naval station affairs, must be met from island revenues, especially from excise and land taxes which are levied by the governor, and from customs, the rates of which are distinct from the general tariff of the United States, being determined by the Secretary of the Navy under the authority of the President.

The American Government has built roads and bridges, dredged the harbor, set buoys, introduced the United States currency, and abolished peonage. It has brought pure drinking water into Agaña, enforced sanitary regulations, vaccinated the whole people, segregated lepers, trained midwives, and established hospitals. This has made Agaña one of the healthiest cities in the tropics, and greatly reduced the death rate throughout the island. A school system has been established, with compulsory attendance in the lower grades, and with optional normal, agricultural and night classes. English, the official language, is widely understood. Army transports stop once a month on their way out from San Fran-

cisco to Manila, and now carry merchandise at reasonable rates. The natives, however, wish some share in the government, and point out that Spain formerly paid 80 per cent of administrative expenses from its home treasury and subsidized a line of bimonthly merchant steamers. See ANNEXATIONS TO UNITED STATES; DEPENDENCIES OF THE UNITED STATES. **References:** G. L. Dyer, in Lake Mohonk Conference of Dependent Peoples, *Report*, 1910, 154–167; C. H. Forbes-Lindsay, *America's Insular Possessions* (1906), I, chs. vi-viii; J. Wheeler, *Report on the Island of Guam* (1900).

GEORGE H. BLAKESLEE.

GUANO ISLANDS. The Guano islands of the United States are small, uninhabited islets over which the Government extends its jurisdiction in order "to benefit American agriculture by promoting the supply of guano at a reasonable price." Practically all legislation regarding them is found in the act of Congress of Aug. 18, 1856, the leading section of which reads: "Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States." The discoverer is given exclusive right to occupy the island and to dispose of the guano, but must give bond to sell it within the United States and at prices fixed by the Government. All offenses and crimes committed on, or in the waters adjacent to, a guano island are deemed by law to have taken place on board an American merchant ship on the high seas, and are punished accordingly. The President is authorized to employ the land and naval forces to protect American rights over the guano islands, but the Government does not consider itself bound to retain possession of them after the guano has been removed. Much doubt exists in regard to the present status of many of them. Nov. 28, 1894, the Secretary of the Treasury sent to the Department of State a list of guano islands which had been legally bonded, about 75 in number, and asked that the list be revised so as to include only islands which were then considered as appertaining to the United States. This request the Department of State refused to grant on the ground that it would be required to pass on the rights of a large number of private persons, which it preferred not to do. Some of the guano islands are in the Caribbean Sea but the great majority lie scattered throughout the Pacific. See ANNEXATIONS TO THE UNITED STATES; DEPENDENCIES OF THE UNITED STATES; TERRITORY, ACQUIRED, STATUS OF. **Reference:** J. B. Moore, *Digest of International Law* (1906), I, 556–580.

G. H. B.

GUATEMALA. Guatemala included originally all of Central America with Chiapas and Yucatan. It declared independence from Spain in 1821, was attached to the Mexican Empire in 1822, but withdrew to form the Central American Federation in 1824, when the constitution was proclaimed. Lying between latitude 13° 45′ and 17° 50′ north, and longitude 88° 15′ and 92° 12′ west (Greenwich), the area is 48,290 square miles, the population practically 2,000,000, about 30 to the square mile. Legislation is by the national assembly, unicameral, one delegate for every 20,000 inhabitants, elected by direct vote for four year terms. A permanent committee of seven acts during recess. The president is elected by direct vote for six years (March 15, 1911); there is no vice-president, but *designados* appointed by Congress take his place when necessary. The cabinet consists of six secretaries: foreign affairs; government and justice; treasury and public credit; war; public instruction; and promotion (*Fomento*). The judiciary is composed of a supreme court of five and a court of appeal of three, all elected by direct vote. The republic is divided into twenty-one departments, Guatemala City being the capital. State religion is Roman Catholic. **References:** J. I. Rodriguez, *Am. Constitutions* (1905), I, 235–258; Pan American Union, *Publications.*

A. H.

GUERRILLAS. Partisans engaged in petty warfare have been called guerrillas in English ever since the Peninsular war. The term was made familiar to Americans by the Mexican War, where both sides employed and executed guerrillas in turn. In 1861 the Confederate War Department declined to license men who proposed to fight under no orders and support themselves by plunder, on the ground that they would be outlaws; but the "partisan rangers" recruited under an act of Congress in 1862 were little better, though their officers held commissions. In the Southwest, where they operated behind the lines of the Union armies and were alternately citizens and soldiers in border warfare, it was not the practice to treat them as prisoners of war. Lincoln's reluctance to approve sentences of death led certain federal generals to order the extirpation instead of the capture of guerrillas; and his warning against the employment of local militia to expel partisans, "because, under pretense of doing this, they become murderers and marauders themselves," was not regarded in Missouri.

Districts in Virginia were laid waste in 1864 on the ground that the activity of guerrillas in any region involved the "total destruction of private rights" therein; and similar action was taken in South Africa in 1900. Nevertheless, the risk of retaliation usually secured for guerrillas the privilege of exchange when captured during the Civil War. Lee and other southern generals found that the dis-

cipline of regular forces was injured by the example of the partisans and urged the repeal of the act under which the irregular forces were enrolled.

The code of the Hague Conference of 1907 allows guerrillas belligerent rights, provided they fight openly and observe the laws of war, even when attacking the enemy's communications; but unless they belong to a *levée en masse* confronting an invader, a regular organization and a distinctive badge or uniform are also required. These rules are less severe than the practice followed throughout the wars of the nineteenth century.

See Bushwhacker; Martial Law; Military Commissions; Military Law; Militia; War, Carrying on of.

References: J. D. Cox, *Military Reminiscences* (1900), I, 219, 420–424; J. S. Mosby, *Reminiscences* (1887), 26, 41, 100, 157; F. Lieber, *Misc. Works* (1881), II, 262–264, 277–292; J. G. Nicolay and J. Hay, *Lincoln* (1890), VI, 374, 378; J. M. Spaight, *War Rights on Land* (1911), 62, 64, 326, 331, 338; P. C. Standing, *Guerilla Leaders* (1913); War Department, *Official Records* (1880–1901), Ser. I, XII, Pt. III, 75, 127, 169, 474; XIII, 12, 402, 446, 835; XLIII, Pt. II, 1025 1088; *ibid.*, Ser. I, II, IV, V, VII, VIII. C. G. Calkins.

GUIANAS. Three dependencies of European powers, and the only area of South America not entirely self-governing, situated at the northeast section of that continent, between Venezuela and Brazil. These possessions are known as British, Dutch, and French Guiana. British Guiana, the westermost, has an area of 90,277 square miles, and a population of approximately 305,000, including about 125,000 Africans and 105,000 East Indians. The capital is the seaport Georgetown, with nearly 55,000 inhabitants. The executive officer of Great Britain is a governor; he has a government secretary, and is assisted by a court of policy of seven official and eight elected members; also by a combined court that includes an additional six elected financial representatives; there is likewise an executive council. Dutch Guiana or Surinam, the central, has an area of 46,060 square miles, and a population of nearly 85,000. The capital is the seaport Paramaribo, with 35,000 inhabitants. The executive officer of Holland is a governor; he is assisted by a vice-president and three members, all nominated by the Queen. Local self-government prevails within the colony. French Guiana, the easternmost, has an area of about 30,500 square miles, and a population of 40,000. The capital is the seaport Cayenne, population 13,000. The executive officer of France is a governor; he is assisted by a privy-council of five members. The colony (the capital and fourteen communes) has a council-general of sixteen members and a deputy in the French parliament. French Guiana has a penal settlement for habitual criminals and convicts sentenced to hard labor. Reference: *Statesman's Year Book.* A. H.

GUNBOAT SYSTEM. A system, inaugurated during Jefferson's administration, of building gunboats to be manned by the seamen of the towns for the defense of the principal harbors. It was opposed by the Federalists who favored a strong Navy. See Jeffersonian Democracy. O. C. H.

H

HABEAS CORPUS

Nature of the Writ.—A well known procedure by the law of England, which is fully recognized in the United States for determining the lawfulness of the imprisonment or detention of any person and to release such person from such imprisonment or detention if found to be unlawful, is commenced by the issuance of a writ by a court or judge to an officer or other person charged with unlawfully restraining another of his liberty under some pretence of authority. The command or direction in the writ is that the person to whom it is directed shall produce the body of the person detained at a specified time and place and state the day and cause of the taking and detention of such person, and the writ is named *habeas corpus* because those words were used in the form of writ, originally in Latin, usually employed. In some other writs the same words were used but the writ now generally understood by this appellation is the one which was in fuller description known as *habeas corpus ad subjiciendum et recipiendum*, which, in brief, commanded the person to whom it was addressed to have the body of the person alleged to be unlawfully detained before the court or judge at a specified time and place and submit to there receiving the judgment of the court or judge as to the further disposition of such person. This writ is called by Blackstone in his *Commentaries* the most celebrated writ in the English law, and the proceeding under it is uniformly esteemed not only in England but also in the United States as the most important safeguard of personal liberty. It affords a summary method of investigating the lawfulness of the detention of a person under any form of pretended authority and affords the remedy of immediate release if the detention is found to be unlawful.

History.—Some form of legal procedure to determine the lawfulness of imprisonment under pretended authority was known in the Roman law; but the procedure by writ of habeas corpus became notable in England as a remedy against arrest or imprisonment otherwise than by the law of the land as prohibited in Magna Charta. Attempts on the part of the Crown to coerce or punish subjects otherwise than in the due course of legal procedure, involving an assertion of a superiority on the part of the King and those acting under his direction over the authority of the courts, was the subject of protest from time to time, especially during the reign of Charles I (1625–1649), and finally, during the reign of Charles II, the famous Habeas Corpus Act was passed by Parliament (1679), which, while it declared no new principle of constitutional law, provided a more effective remedy for the violation of the recognized guaranties of personal liberty. The provisions which made the remedy particularly effective were those authorizing the issuance of the writ by and the hearing of the case before any judge, without regard to terms of court, and the imposition of severe penalties on any judge who refused without good cause to entertain such proceeding, and upon any officer or other person who failed to comply with the order releasing the prisoner, if such order should be made. The constitutional characteristic, however, was that no order or authority of the Crown could be relied upon as superior to the authority and order of the court or judge. Although this habeas corpus act was not by any general provision made applicable to the colonies, the procedure by habeas corpus was recognized in them as a part of the common law of England and in all the states of the United States it has been adopted and preserved as an important method of procedure.

Constitutional Provisions.—The necessity of war may require that, for the time being, the civil power represented by the courts shall be superseded by the military power exercised by the executive department of government and the result of the declaration of martial law on proper occasion is to suspend the power of civil courts and judges within the territory in which martial law is declared. Such suspension necessarily involves the suspension of the right to proceed by habeas corpus to determine the validity of acts done under military authority. But it is provided in the Federal Constitution (Art. I, Sec. ix, ¶ 2) that the privilege of the writ "shall not be suspended unless when in cases of rebellion or invasion the public safety may require it." This provision is regarded as a prohibition on the suspension of the writ by the President without authority of Congress. In the state constitutions are found various provisions recognizing the pro-

cedure by habeas corpus as an essential protection against the unlawful exercise of authority infringing the personal liberty of the subject.

Procedure.—As a recognized legal remedy, resort to the proceeding by habeas corpus may be had where a person is imprisoned under pretended legal authority which in fact for any reason is absolutely void, as where the warrant of arrest or commitment is substantially insufficient or the proceedings under which the warrant was issued are without legal authority. If bail is refused in case of arrest for an offense which is by law bailable (*see* BAIL) a court or judge in habeas corpus proceedings may require sufficient bail to be accepted. In some states the sufficiency of the evidence on a preliminary examination of commitment may be reviewed in such proceeding; but it is not available as a method of reviewing the action of a court having jurisdiction to try and punish, a sufficient answer to the writ being that the person is held under a lawful order or judgment of a court. Quite aside from its constitutional functions the writ of habeas corpus is usually available to determine the right to the custody of an infant or other person under legal disability.

In Federal Courts.—A state court or judge can not inquire by habeas corpus into the validity of arrest or detention of a person under federal authority. The right to redress in such cases, if any, must be sought in the federal courts. But on the other hand, federal courts and judges may inquire into the cause of the restraint of liberty of any person by a state when the justification of federal authority or immunity is set up for the act complained of. Federal courts and judges will not, however, in the exercise of their discretion, grant the writ as against state action where the person restrained has adequate redress or protection against the infringement of alleged rights or privileges under the Federal Constitution in the regular course of legal procedure until resort to such regular procedure has proved unavailing.

References: W. S. Church, *Writ of Habeas Corpus* (1886); R. C. Hurd, *Right of Personal Liberty and Writ of Habeas Corpus* (1858); T. C. Spelling, *Extraordinary Remedies* (2d ed., 1901), II, 977–1165; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 483–497. As to conflicting state and federal jurisdiction, see *Tarble's Case* (1871), 13 *Wallace* 397; *In re Neagle* (1889), 135 *U. S.* 1; Whitten *vs.* Tomlinson (1895), 160 *U. S.* 231; S. D. Thompson, "Abuses of the Writ of Habeas Corpus" in Am. Bar Ass'n, *Reports*, VI (1883), 243; J. L. Bishop, "Jurisdiction of State and Federal Courts over Federal Officers" in *Columbia Law Review*, IX (1909), 397.

EMLIN MCCLAIN.

HABITATION TAX. See TAX, HABITATION.

HAGUE CONFERENCES. First Call (1898).—The Hague peace conferences are diplomatic assemblies which met in the years 1899 and 1907. The first was composed of official representatives of twenty-six states, the second of official representatives of forty-four states. The first conference was due to the initiative of the Czar of Russia who issued the call for it in a circular letter dated August 12–24, 1898. The nature and purpose of the conference, as outlined in the first paragraph of the letter, was "the maintenance of general peace, and a possible reduction of the excessive armaments which weigh upon all nations, present themselves in the existing condition of the whole world as the ideal towards which the endeavors of all Governments should be directed." In a second circular issued December 30—January 11, 1898, the Czar broadened the scope of the proposed conference by including in the programme the consideration of an agreement respecting the employment of good offices, mediation and arbitration in international relations.

First Conference, 1899.—The conference met at the Hague May 18 and adjourned on July 29, 1899. It raised good offices and mediation to the rank of international institutions, provided for international commissions of inquiry to investigate disputed facts, created a permanent panel of judges from which temporary tribunals could be formed for the arbitration of disputes, and codified arbitral procedure. In addition, it adopted a convention regulating land warfare and applied the principles of the Red Cross Convention to naval warfare. It failed, however, to reach an agreement regarding the reduction or limitation of armaments, which had been the primary object in assembling the conference, although it recommended that this question be the subject of further study.

Second Conference, 1907.—Upon the initiative of President Roosevelt, in response to the request of the Interparliamentary Union, steps were taken for a second conference, and in 1906 the Russian Government issued a formal call. Invitations were extended to all the American states as well as the other states composing the society of nations. The Conference opened on June 15 and closed on October 18, 1907. The conventions of the first conference were revised in the light of experience and a large number of additional conventions were agreed upon, the most important of which relate to the limitation of force in the recovery of contract debts; the laying of mines; the adaptation to naval war of the Geneva Convention; the creation of an International Prize Court, and the codification of the rights and duties of neutral powers in naval war. A project presented by the American delegation for the establishment of a truly permanent court of arbitration (the Court of Arbitral Justice) was accepted in principle, leaving the

method of appointment of its judges to subsequent diplomatic agreement. Moreover, the conference recommended that a third conference should be called, which is expected to meet approximately in 1915.

Proceedings.—The Hague Conferences are diplomatic assemblies; they are not, in any sense of the word, a parliament. Each state has one vote irrespective of the number of its delegates. Effective majorities do not exist; they are only important as showing the degree of favor with which a project is received. Unanimity is required for the adoption of a proposal, because a sovereign state cannot be coerced. Each delegate acts under instructions from his government, and secures its approval in advance of final action, so that the projects approved by the conference are likely to be ratified by the participating states. Each separate convention is signed by the delegates in the alphabetical order of the French names of their countries, and in the same order, the delegates are seated and the votes taken.

A state may approve a convention as a whole, while objecting to certain articles. These articles may be excluded by a reservation in the signature of the convention. The conventions, declarations, resolutions, and recommendations are arranged in appropriate order in what is called the Final Act which is a statement of the call, meeting, and results of the conference and which is signed by the delegates. The separate conventions, declarations, etc., are attached to the Final Act and with it constitute the positive work of the conference. The language of the conference is French, although any other language may be used, but if so, it is interpreted into French for the benefit of the members. The minutes of the meeting, called *procès-verbaux*, are drawn up day by day and are submitted to the members for correction; they include the draft projects as well as the summary of the addresses delivered and the votes of the states.

See ARBITRATION AND PEACE; DISARMAMENT; FOREIGN POLICY OF THE UNITED STATES; HAGUE TRIBUNAL; INTERNATIONAL LAW, PRINCIPLES OF; MARITIME WAR; MONROE DOCTRINE; STATES, EQUALITY OF; WAR, INTERNATIONAL RELATIONS IN.

References: A. P. Higgins, *Hague Peace Conferences* (1909); F. W. Holls, *Peace Conference at The Hague* (1900); J. B. Scott, *Hague Peace Conferences of 1899 and 1907* (1909); W. I. Hull, *The Two Hague Conferences* (1908).

JAMES BROWN SCOTT.

HAGUE TRIBUNAL. The Permanent Court of Arbitration at The Hague was created by the First Peace Conference of 1899 (*see* HAGUE CONFERENCES). During the nineteenth century, international arbitration had become a favorite method of settling international disputes, but no fixed tribunal or method of procedure had as yet been devised. As a result of The Hague Conference of 1899, however, an international court of arbitration was finally established. Article 20 of the Convention for the Pacific Settlement of International Disputes provides for the so-called Permanent Court. In the absence of a special agreement as to the selection of judges, Article 24 of the Convention provides that each party shall appoint two arbitrators who, together, shall choose an umpire. The permanent panel from which the five members must be chosen consists of members appointed, to the number of not more than four, by each country signatory of the Convention. The Hague Conference of 1907, among other modifications of the Convention adopted in 1899, provides that only one of the two arbitrators selected by each party can be chosen from among the persons appointed by it as members of the court. The majority of the court will thus be neutral to the dispute. It is also provided that an International Bureau be established as the record office and channel of communication of the court.

Articles 30–57 constitute a code of arbitral procedure, unless the parties adopt other rules. Provision is made for a Special Agreement (*compromis*) defining the question at issue and the powers of the arbitrators. The states in controversy are represented before the tribunal by special agents who present the cases of their respective governments through the medium of counsel. The award is prepared in private by the court, read in public, and definitely settles the dispute. A reservation, however, may be made in the *compromis* of a right to demand a revision of the award. The Convention (Articles 9–14) also provides for a Commission of Inquiry to investigate disputed questions of fact.

The following is a list of cases tried before the courts institutes at The Hague in accordance with the Convention: (1) United States—Mexico, Pious Fund Case (1902); (2) Germany, Great Britain, and France—Japan, Japanese House Tax Case (1902); (3) Germany, Great Britain and Italy—Venezuela, Preferential Treatment case (1903); (4) France—Germany, Muscat case (1904); 5) France—Germany, Casablanca case (1908); (6) Norway—Sweden, Maritime Boundary case (1908); (7) United States—Great Britain, North Atlantic Coast Fisheries case (1910); (8) United States—Venezuela, Orinoca Steamship Company case (1910); (9) Great Britain—France, Savarkar case (1911); (10) Italy—Peru, Canèvaro case (1912); (11) Russia—Turkey, interest on indemnity of 1879 (1912); (12) Italy—France, "Carthage" and "Manouba" cases (1913).

See ARBITRATION AND PEACE; HAGUE CONFERENCES; JUDICIARY AND JUDICIAL REFORM; JURISPRUDENCE.

References: J. B. Scott, *Hague Peace Conferences of 1899 and 1907* (1909), I, 274–318,

texts in *Peace Conference at The Hague* (1910); J. L. Tryon, "The Hague Peace System in Operation" in *Yale Law Journal*, November, 1911; F. W. Holls, *Peace Conference at The Hague* (1900), 233–305; L. Oppenheim, *Int. Law* (1912), 437–442; Lake Mohonk Conference on International Arbitration, *Proceedings*, 1910; H. H. Lammasch, in *Am. Jour. of International Law*, Jan., 1910.

JAMES BROWN SCOTT.

HALF-BREEDS. The name given to one of the Republican factions in New York in Garfield's administration (1881). They opposed the nomination of Grant for a third term even before Garfield's election, and became the administration Republicans after the election. See REPUBLICAN PARTY; STALWARTS. **References:** E. E. Sparks *National Development* (1907), 182–187; T. V. Cooper, *Am. Politics* (1882), I. 253.

T. N. H.

HALIFAX COMMISSION AND AWARD, 1875–77. To execute the agreement to arbitrate the compensation due under Article XVIII of the treaty of 1871 (*see* ALABAMA CONTROVERSY) provision was made in Article XXIII for appointment of a mixed commission of three members—one chosen by the President, one by the Queen of England and a third by the President and Queen conjointly, or (after a limited period) by the Austrian minister at London.

In April, 1875, after several postponements, Sir Edward Thornton resumed arbitration proceedings by proposing steps toward appointment of the third member. Secretary Fish, disclaiming blame for delay, interposed no obstacle. In March, 1877, the Austrian ambassador at London selected Delfosse, the Belgian minister at Washington, to whose appointment Fish had objected in 1873. Alex. T. Galt was the British commissioner and Ensign H. Kellogg the American.

The commission met at Halifax, June 15, 1877, Delfosse presiding. On November 23 Galt and Delfosse, without concurrence of Kellogg—and without record of steps or computations antecedent to their decision—announced an award of $5,500,000 against the United States for fishing privileges for twelve years. According to Sparks, "It was generally suspected that the large sum was due in part to the fact that of the $15.000,000 awarded to the United States against England for damages inflicted by Confederate cruisers more than two-fifths remained in the United States Treasury in 1874 awaiting claimants, and a second court had to be established in 1882 to get rid of it."

See FISHERIES, INTERNATIONAL; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH.

References: J. G. Blaine, *Twenty Years of Congress* (1886), II, 623; C. Cushing, *Treaty of Washington* (1873), ch. ii; C. B. Elliott, *U. S. and Northeastern Fisheries* (1887), 79–89; J. B. Moore, *Int. Arbitrations* (1898), I, 703–53; *House Reports*, 46 Cong., 3 Sess., No. 329, (1881); *Sen. Exec. Docs.*, 45 Cong., 2 Sess., No. 44 (March 21, 1878); E. E. Sparks, *Nat. Development* (1907), 147–149.

J. M. CALLAHAN.

HAMILTON, ALEXANDER. Alexander Hamilton (1757–1804) was born in the island of Nevis, West Indies, January 1, 1757. In 1772 he went to New York, where he soon attracted attention by writing and speaking for the patriot cause. He entered the American Army in 1776, was appointed one of Washington's aides, and served until 1781, when a trivial difference with Washington led to his resignation. In 1782 he was admitted to the bar, and presently became a leader in New York politics, being throughout most of his subsequent career the moving spirit of the party opposed to Clinton, Livingston and Burr. He was a member of the Federal Convention of 1787, and subsequently, in coöperation with Jay and Madison, set forth in the *Federalist* the greatest contemporary exposition of the Constitution: and he later secured the ratification of the Constitution by New York. As Secretary of the Treasury, 1789–1795, he won undisputed place among the great financiers and statesmen of the world. To him were due the funding of the national debt, the assumption of the state debts, the establishment of the first Bank of the United States, the inauguration of an excise system, and the passage of a coinage act. In his opinion on the constitutionality of a national bank (1791), he elaborated the theory of broad or loose construction and implied powers, to which Marshall later gave judicial sanction; while his *Report on Manufactures* (1792) is the ablest presentation by any American statesman of the early theory of protection to young industries. As the intellectual leader of the Federalists and trusted adviser of Washington, he incurred the bitter emnity of Jefferson, and later broke with Adams; but although his political views rested upon broad conceptions of popular welfare, he was the leader of the classes, not of the masses. He died July 12, 1804, following a duel with Aaron Burr. See FEDERALIST PARTY; POPULAR GOVERNMENT; TREASURY DEPARTMENT. **References:** Alexander Hamilton, Works (ed. by H. C. Lodge, 1885–86); J. C. Hamilton, *Life of Alexander Hamilton* (1834); S. M. Schmucker, *Life and Times of Alexander Hamilton* (1856); J. T. Morse, Jr., *Life of Alexander Hamilton* (1876); H. C. Lodge, *Alexander Hamilton* (rev. ed., 1898).

W. MACD.

HAMLIN, HANNIBAL. Hannibal Hamlin (1809–1891), Vice-President of the United States with Lincoln, was born at Paris Hill, Maine, August 27, 1809. In 1833 he was ad-

mitted to the bar, and was soon active in Democratic politics. From 1836 to 1840 he was a member of the state house of representatives, being speaker in 1837, 1839, and 1840. In 1843 he was elected to Congress, where he served two terms, and in 1848 was elected to the Senate. In January, 1857, he resigned his seat to become governor of Maine; but on the sixteenth of the month he was again elected Senator, and on February 20 resigned the governorship. At the Republican national convention of 1860 he was nominated for Vice-President, and resigned his seat in the Senate to accept the office. In 1864 he was again a candidate for Vice-President, and received 150 votes on the first ballot; but on the final vote his supporters voted for Andrew Johnson. In 1868 he offered himself again and received votes on four out of the five ballots. From 1869 to 1881 he was once more Senator, and from 1881 to 1883 was minister to Spain. He died at Bangor, Maine, July 4, 1891. **See** REPUBLICAN PARTY; VICE-PRESIDENT. **References:** C. E. Hamlin, *Life and Times of Hannibal Hamlin* (1899); H. Wilson, *Rise and Fall of the Slave Power* (1872–77).

W. MACD.

HAMPTON ROADS CONFERENCE. This friendly, informal conference, resulting from the demands within the dying Confederacy for peace negotiations with the government at Washington, and following two preliminary unofficial interviews between Jefferson Davis and Francis P. Blair, was held on the U. S. steamer *River Queen* in Hampton Roads in February, 1865, between Lincoln and Seward, and three Confederate commissioners (Hunter, Campbell and Stephens), appointed by Davis to confer "upon the issues of the war and for the purpose of securing peace." Lincoln carefully avoided any terms or proposals possibly interpretable as recognition of the Confederacy as a separate power. The speedy collapse of the Confederate Government left the conference only an expression of opinion. **See** CONFEDERATE STATES; STEPHENS, ALEXANDER H.; LINCOLN, ABRAHAM. **References:** J. F. Rhodes, *History of the U. S.*, V (1908), 57–73; A. H. Stephens, *War Between the States* (1870), II, 589–623; Nicolay and Hay, *Lincoln* (1890), chs. v, vi.

J. M. C.

HANCOCK, JOHN. He was born in Quincy, Mass., January 12, 1737, and died October 8, 1793. After graduation from Harvard, he engaged in business and accumulated large property interests. He became a member of the Massachusetts General Court in 1766 and in 1774 was elected to membership in the provincial congress. From the first, he became active on the side of the colonists and together with Samuel Adams was excluded from the privilege of the proclamation issued by General Gage, 1775, in which pardon was offered to all rebels. He was a delegate from Massachusetts to the Continental Congress, 1775–1780, and again from 1785 to 1786. He was president of the Massachusetts provincial congress, president of the Continental Congress, May 1775 to October 1777, and served as governor of Massachusetts from 1780 to 1785 and again from 1787 until his death. His support for the Constitution in the Massachusetts convention is said to have been won through the agreement that he was to be made governor in the next election. **See** CONTINENTAL CONGRESS; DECLARATION OF INDEPENDENCE; MASSACHUSETTS. **Reference:** W. C. Burrage, *John Hancock and his Times* (1891).

J. A. J.

HANNA, MARCUS ALONZO. Marcus A. Hanna (1837–1904) was born at Lisbon, Ohio, September 24, 1837. He amassed large wealth in the coal and iron business at Cleveland and elsewhere, and in the carrying-trade of the Great Lakes. In 1884, 1888, and 1896 he was a delegate to the Republican national conventions. In 1896 he was elected chairman of the Republican national committee, directed the McKinley campaigns of that year and 1900, and in 1896 was largely responsible for McKinley's election. The elaborate organization of the Republican campaign machinery, and the collection and expenditure of large sums of money for campaign expenses, were the distinguishing features of his policy. In 1897 he was elected United States Senator from Ohio, and held that office until his death. On the formation of the National Civic Federation, in 1901, he was chosen its president. He died at Washington, February 15, 1904. **See** MCKINLEY, WM.; TARIFF POLICY OF THE UNITED STATES; REPUBLICAN PARTY. **References:** H. Croly, *Marcus Alonzo Hanna* (1912); M. Halstead, "The Three Strategic Chiefs of the Presidential Campaign" in *Rev. of Reviews*, XIV (1896), 421–426; "Mr. Hanna's Public Career" in *Nation*, LXXVIII (1904), 122–123.

W. MACD.

HANSEATIC LEAGUE. While it is impossible to assign any precise date to the organization of the Hanseatic League, some form of association began to take shape in the middle of the thirteenth century. In 1241 Lübeck and Hamburg agreed to safeguard the important roads between the Baltic and the North Sea, and in 1246 groups of maritime towns, including Lübeck, Hamburg, Lüneburg, Wismer, Rostock and Stralsund had entered into an understanding with one another. From these early beginnings there arose a number of minor leagues, based primarily on economic motives and the defence of trade. These defensive alliances between towns, at first mainly economic, took on, also, under the pressure of circumstances, a political character. The great development of leagues took place from the middle of the thirteenth to the middle of the

fourteenth centuries. The conquering of Wisby by Waldemar IV in 1361 formed a closer union of the cities, and on November 19, 1367, the cities of north and west Germany entered into the celebrated League of Cologne. About this time the word "Hansa" began to be used. For nearly two centuries this great league, though organized primarily for economic purposes, became one of the leading powers of Europe. It entered into treaties with foreign sovereigns as well as with German rulers; it made war and peace and carried on a common diplomacy. Federal in spirit and organization, with a central authority in a Bundestag of instructed delegates, some sort of provision for the settlement of disputes among themselves, and a guarantee of freedom from external interference, the league nevertheless never organized a fully developed federal constitution. The religious struggles and the economic changes incident on the Thirty Years' War caused the league to fall. The league numbered at its highest 77 cities. The last meeting was held in 1669. See FEDERAL STATE; GERMANY, FEDERAL ORGANIZATION OF.

References: H. Zimmern, *The Hansa Towns* (1889); E. Daenell, *Die Blutezeit der deutschen Haas* (1906); A. B. Hart, *Intro. to Federal Gov.* (1891).

B. E. H.

HARBOR SYSTEMS. A harbor is a place of refuge where ships may lie sheltered from storms and waves, and where they may be loaded, discharged, and repaired in safety. The introduction of steam and steel, and improved machinery in transportation has so increased the size of ships as to make constantly larger demands upon harbors. Where a century ago ten feet of channel depth was adequate, now a first class harbor must have forty feet. This has increased enormously the problem and the cost of harbor construction and equipment.

Harbor administration is usually complicated, for the channel is a highway, and must be kept free for all who may wish to come and go therein; while the docks and piers must be devoted, at least temporarily, to the individual shipper. So the channel is usually provided and maintained by the general government, while the docking facilities have been variously developed by private corporations or by municipalities.

The most succesful port development on record has been done by the system of the non-profit-paying public trusts, best exemplified by the "Clyde Navigation," and the "Mersey Docks and Harbour Board." By act of Parliament the trustees are given a monopoly of all harbor business including the handling and warehousing of freight, the assessing of taxes, fees and fines. Under this system the port of Liverpool has kept pace with the demands of a very rapidly growing commerce, and has made a capital investment in the last sixty years of over $200,000,000, every bit of which has been raised in the business of the port, no funds being furnished by either the general government or city. The port trust of Glasgow, the "Clyde Navigation," has an almost equally good record, and London adopted the same plan of administration in 1908.

All the ports of the continent of Europe are publicly owned and managed, either by the general government or by state or municipality.

In America the general Government defines channels and anchorage basins by establishing pier-head lines. Inside these lines the state has supreme power. But in most of our harbors the water front has been alienated from state and city, to private ownership and control. This dispersal of interest has seriously hampered harbor development in America. Nowhere in our country are harbor improvement and administration so well advanced as in the leading European ports. But there is a strong movement growing in favor of municipal or some other form of public ownership and administration. New York City has adopted the plan of municipal ownership and has won back nearly all the water front of Manhattan island. New Orleans and San Francisco have made wonderful progress with harbor monopolies in the hands of state harbor boards. Los Angeles is quite as much alive with the harbor as a municipal venture. Boston, in 1911, created a new dock commission, with large powers.

The United States Government has been very generous in its encouragement of harbor and river development. Beginning in 1826 with an appropriation of $150,000, the annual expenditure has grown to the sum of $29,685,583.02 in 1910. The aggregate appropriation at the same date had reached the sum of $660,604,629.74.

See DOCKS AND WHARVES; LIGHTHOUSE SYSTEM; PILOTAGE; PUBLIC WORKS; RIVER AND HARBOR BILLS; SHIPPING, REGULATION OF.

References: U. S. Chief of Engineers, *Annual Reports;* P. Joly, "Various Methods of Administering and Operating Commercial Ports" in Tenth International Navigation Congress (Milan), *Report,* 1905, 1–20; J. R. Smith, *Organization of Ocean Commerce* (1905), 119–125; J. P. Goode, "Development of Commercial Ports" in Chicago Harbor Commission, *Report* 1909, 61–161, "Port Administration and Harbor Facilities; a Symposium" in Am. Acad. of Pol. and Social Sci., *Annals,* XXIX 1907; London County Council, *Report of the Rivers Committee,* 1907, 1–43; C. de Cordemoy, *Exploitation des Ports Maritimes* (1909); U. S. Commissioner of Corporations, *Report on Transportation by Water in the U. S.,* 1909, Pt. III, *Water Terminals,* 1–411.

J. PAUL GOODE.

HARD CIDER CAMPAIGN. The presidential canvass of 1840 is known as the "log

cabin and hard cider" campaign. William Henry Harrison (*see*), the Whig candidate, was said, by his opponents by way of ridicule, to have lived in a log cabin and drunk hard cider. Harrison's adherents took up the expression and used it to arouse enthusiasm among the masses. See WHIG PARTY.

O. C. H.

HARDS. The "hards" were New York Democrats, the name "hard" being applied to the regulars by the opposing faction. The term "hunker" (*see*) was earlier applied to this class. The factions, "hards" and "softs" (*see*), continued up to the Civil War. The "hards" opposed Douglas and his popular sovereignty. In the Democratic convention at Cincinnati in 1856, the "hards" and "softs" were both seated, each delegate having half a vote. In the Charleston convention 1860, the "hards" and "softs" both sent delegates, the "softs," were seated. See DEMOCRATIC PARTY. References: J. F. Rhodes, *Hist. of U. S.*, I (1893), 389, 481; T. C. Smith, *Parties and Slavery* (1907), 118, 142; E. Stanwood, *Hist. of the Presidency* (rev. ed., 1912).

T. N. H.

HARMON, JUDSON. Judson Harmon, (1846–) was born at Newtown, Ohio, February 3, 1846. In 1869 he was admitted to the bar, and began practice at Cincinnati. In 1872 he took an active part, as a Democrat, in the Greeley campaign, managing the canvass in Cincinnati; and thereafter rose slowly but steadily to prominence in his party. In 1876 he was elected a judge of the court of common pleas, but the election was contested and decided against him. In 1878 he was elected judge of the superior court, and served, with a reëlection in 1883, until 1887, when he resigned. He practiced law until June, 1895, when he was appointed Attorney General of the United States to succeed Richard Olney, and served to the end of Cleveland's term, March, 1897. In 1908 he was elected governor of Ohio, notwithstanding a majority vote of 75,000 for President Taft; and in 1910 was reëlected by a plurality of 100,000. His investigation of the state departments and prosecution of officials charged with improper conduct attracted wide attention. Acts extending the classified civil service, establishing a direct primary for congressional elections, punishing corrupt practices in elections, regulating public utilities, and extending the initiative and referendum to cities, were among the more notable fruits of his administration. In the Democratic national convention at Baltimore in June 1912, Harmon was a candidate for the presidential nomination and received votes in forty-two out of the forty-six ballots cast. See DEMOCRATIC PARTY; GOVERNOR OF THE STATE. Reference: W. B. Hale, "Harmon and the Presidency" in *World's Work*, XXII (1911), 14446–14459.

W. MacD.

HARRINGTON, JAMES. See POLITICAL THEORIES OF ENGLISH PUBLICISTS.

HARRISON, BENJAMIN. Benjamin Harrison (1833–1901), twenty-third President of the United States, was a native of Ohio, but after 1854 a resident of Indiana. During the course of a successful career at the bar he was elected, in 1881, to the United States Senate. In 1887 he failed of reëlection, but in 1888 he was made the Republican nominee for the presidency and in the election that ensued he defeated the Democratic candidate, Grover Cleveland, by 233 electoral votes to 168. The important events of the Harrison administration were the enactment of the McKinley tariff and the Sherman silver law of 1890, the advance of civil service reform, the extension of commercial reciprocity, and the adjustment of numerous international complications, notably the controversy with Great Britain relating to the Bering Sea fur-seal question. In the management of foreign relations Harrison was at his best, as was demonstrated by the skill with which, after his retirement from the presidency, he conducted the case of Venezuela in the arbitration of that nation's boundary dispute with Great Britain (1899). Nominated by his party for a second term in 1892, he was defeated by his former antagonist, Cleveland. See INDIANA; PRESIDENT, AUTHORITY AND INFLUENCE OF; PRESIDENTIAL ELECTIONS; REPUBLICAN PARTY. References: A. Hedges, *Benjamin Harrison: Speeches* (1892); L. Wallace, *Benjamin Harrison* (1882); J. G. Wilson, *Presidents of the U. S.* (1894); Benjamin Harrison, *This Country of Ours* (1898), *Views of an Ex-President* (1901).

F. A. O.

HARRISON, WILLIAM HENRY. William Henry Harrison (1773–1841), ninth President of the United States, was born at Berkeley, Va., February 9, 1773. He entered the Army in 1791, and served with distinction in the frontier Indian wars. He retired in 1798, and was appointed secretary of the Northwest Territory, but resigned in October, 1799, to become territorial delegate in Congress. From 1801 to 1813 he was governor of Indiana Territory. In the War of 1812 he rose to the rank of major-general. He was a representative in Congress from Ohio from 1816 to 1819, and from 1825 to 1828 a Senator, succeeding Andrew Jackson as chairman of the Senate committee on military affairs. He resigned his seat in 1828 to accept an appointment as minister to Colombia, from which post he was recalled the next year. In 1835 he was nominated for the presidency by an Anti-Masonic convention in Pennsylvania, and made a creditable campaign against Van Buren; but his electoral vote was only 73 against 170 for his opponent. In 1839 he was again nominated by the Whig national convention at Harrisburg, and swept the country in 1840, receiving 234 electoral votes

against 60 for Van Buren, the Democratic candidate. He died at Washington, April 4, 1841, exactly one month after his inauguration. See NORTHWEST TERRITORY; WARS OF THE UNITED STATES; WHIG PARTY. References: S. J. Burr, *William Henry Harrison* (1840); H. Montgomery, *William Henry Harrison* (1853); R. Hildreth, *The People's Presidential Candidate* (1839). W. MACD.

HARTFORD CONVENTION. For some years before the War of 1812 the Federalists of the New England states strongly objected to the plans and policies of Jefferson and Madison in the controversies with France and England. When the war began opposition grew in intensity. There was particular opposition to conscription and to the President's ordering the militia into the service of the United States. In October, 1814, the General Court of Massachusetts proposed to the legislatures of other New England states that a convention be held to consider grievances. The situation was acute; even threats of disunion were heard. The convention met at Hartford, December 15. Delegates were present from Massachusetts, Connecticut, Rhode Island, and from two counties in New Hampshire. Later a delegate from a county in Vermont was given a seat. Resolutions were adopted, which were more conservative than some desired and others feared. Soon after the convention adjourned it was known that a treaty of peace had been signed; men lost interest in the resolutions; and before long the words, "Hartford Convention," were only a term of reproach. The resolutions recommended that the legislatures of the states represented protect their citizens from unconstitutional draft or impressment, that each of the states be given a proportional share of revenue raised within its limits and assume the protection of its own territory, that each of the states be prepared to assist in defending the others, that the Federal Constitution be amended as follows: by providing (a) that representation and direct taxes be apportioned among the states according to their respective number of free persons, *i. e.*, that three-fifths of the slaves be no longer included in the enumeration; (b) that a two-thirds vote of both houses of Congress should be required for the admission of new states, for the prohibition of commercial intercourse with foreign nations, and for making offensive war; (c) that embargoes be limited to sixty days; (d) that naturalized citizens be not elected as members of Congress or hold any civil office under the United States; (e) that the same person should not be chosen President for a second term; (f) that a President should not be chosen from the same state two terms in succession.

See EMBARGO ACT; FEDERALIST PARTY.

References: H. V. Ames, *State Papers on Federal Relations* (1906), 77–88; W. McDonald, *Select Documents* (1903), 198–207; H. Adams, *Hist of the U. S.* (1891), VIII, ch. xi; T. Dwight, *Hist. of the Hartford Convention* (1833); J. B. McMaster, *Hist. of the People of the U. S.*, IV (1895), ch. xxviii.

A. C. MCLAUGHLIN.

HAWAII

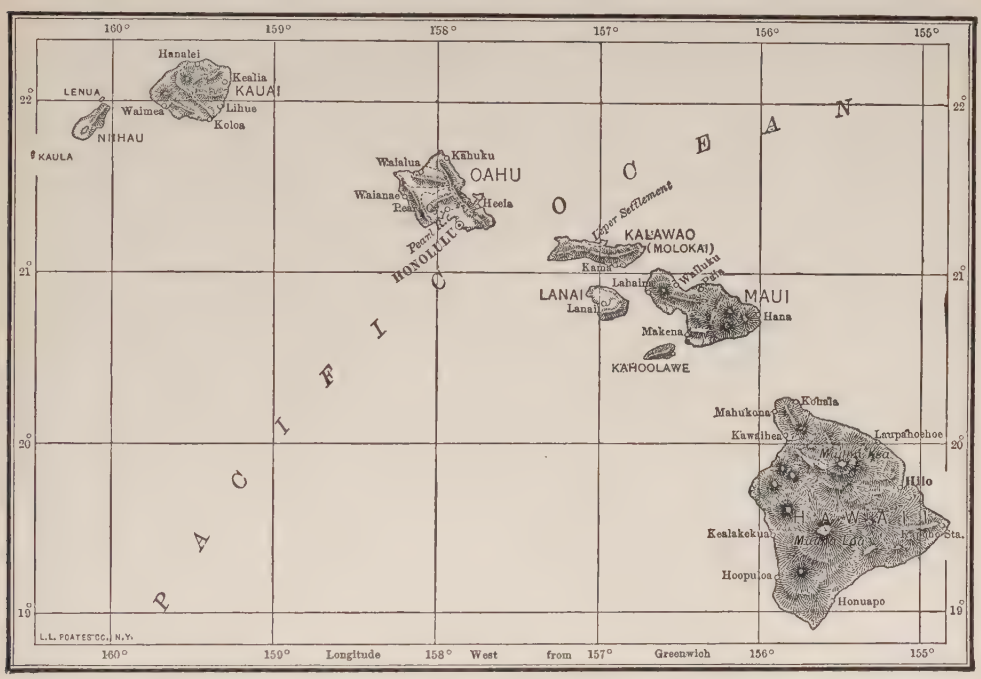
History.—The Hawaiian Islands were settled by Polynesians, probably from Samoa. When discovered by Captain Cook in 1778 the group was divided into several kingdoms. Kamehameha I, by 1795, had conquered all the islands except Kauai and Niihau which yielded to him in 1810. His government was an absolute monarchy with feudal characteristics, the common people having no absolute rights and owning no land but occupying it under chiefs who in their turn held at will of the king, each in the feudal series having all powers of government in his own sphere subject to the one above. In 1820 American missionaries reached the islands and in 1822 the first written laws were published on the mission press. The monarchy under the influence of foreigners, principally English and American, gradually changed with the progress of civilization and became a limited monarchy with laws based on the common law of England but modified by local custom and the civil law. This progress was not forced on the kings by people or foreigners. Successive constitutions were granted freely by the kings. The indirect influence of the American missionaries was probably great. In 1893 a revolution put an end to the monarchy which was succeeded by a provisional government and that, in 1895, by the Republic of Hawaii. In 1898 came annexation to the United States and in 1900 Congress provided a territorial government for the territory of Hawaii, continuing in force most of the laws of the Republic of Hawaii. No violent changes in general laws had been made by the revolution of 1893 or the changes of government following. In 1900 the laws were so thoroughly American that the most noticeable changes caused by extending the United States Constitution over the islands were that indictments by a grand jury became necessary in cases of felony and verdicts by a jury must be unanimous instead of by a vote of nine out of twelve jurors as theretofore.

Government.—The government of the territory of Hawaii is in general like that of the states and other territories of the United States. The United States Government has

control of those matters of which it has control in states, such as post offices, customs, internal revenue and lighthouses, and the territorial government of other matters. The principal executive officers are the governor, secretary, attorney general, treasurer, commissioner of public lands, commissioners of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, surveyor and high sheriff whose duties are such as indicated by their titles. Of the local officials the President of the United States appoints the governor, secretary and judges of the supreme and circuit courts. These must all be citizens of the territory of Hawaii.

circuit courts which are courts of record and whose judges, sitting at chambers have jurisdiction in equity, probate, divorce matters, etc.; and a supreme court of three justices.

All who were citizens of the Republic of Hawaii at the time of annexation were by the provisions of the resolution of annexation made citizens of the United States. Those eligible to vote are men twenty-one years of age or over who have resided in the territory at least a year and are able to speak, read and write either the English or Hawaiian language. The territory is entitled to one representative in Congress who has a right to debate and introduce bills but not a right to vote. The



THE TERRITORY OF HAWAII

The judicial department is dual like that of states. A federal court entitled United States District Court for the Territory of Hawaii with two judges and the powers of United States district courts (*see* COURTS, FEDERAL) has jurisdiction of such matters as come before United States courts in states. Appeals lie from this court to the United States circuit court of the ninth circuit and the United States Supreme Court. The territorial courts have jurisdiction over all other matters, and decisions of the supreme court of the territory can only be reviewed by the United States Supreme Court when the matter concerns a United States statute or a constitutional question or involves $5,000. The territorial courts comprise district magistrates who correspond to justices of the peace and are appointed by the chief justice of the territory; five

general laws of the United States as to public lands do not apply to Hawaii, but there are special homestead laws, etc.; public lands matters are under control of a land commissioner appointed by the governor of the territory of Hawaii.

The territorial legislature meets once in two years and has two houses. The senate is composed of fifteen members at least thirty years of age who are elected from the four counties as districts for four-year terms, and the house of representatives composed of thirty members who must be at least twenty-five years of age and who are elected from six representative districts.

When first organized as a territory, Hawaii had a very centralized government with no county or municipal government. Four counties were organized in 1905, comprising the

whole territory. In 1907, one, the county of Oahu, was reorganized into the city and county of Honolulu and its government changed in some respects from that of the other counties. Since county organization, each successive legislature has enlarged the powers of the counties. The school system is still under the territorial government. Liquor licenses are granted and taken away by local boards appointed for each county by the governor. Tax assessors are appointed by the governor but the rate of taxation is fixed by the counties.

See ANNEXATIONS TO UNITED STATES; HAWAIIAN ANNEXATION; TERRITORIES, ORGANIZED.

References: W. D. Alexander, *Brief Hist. of Hawaiian People* (1891); Resolution of July 7, 1898, *U. S. Stat.*, XXX, 750; "Resolution of Senate of Hawaii, Sept. 9, 1897" in *Fundamental Laws of Hawaii* (ed. by L. A. Thurston, 1904), 247; "Act of April 30, 1900" in *U. S. Stat.*, XXXI, 339; W. F. Frear, "Development of Hawaiian Statute Law" in Hawaiian Historical Society, *Reports*, XIII (1906).

LYLE A. DICKEY.

HAWAIIAN ANNEXATION. The Hawaiian Islands have been under American influence since 1820. A treaty annexing them to the United States was signed in 1854 but failed of ratification; yet they became virtually an American protectorate by the reciprocity agreements of 1875 and 1884. In January, 1893, after the Queen of Hawaii had been dethroned by a revolution, the newly established provisional government applied for annexation. A treaty to that effect was submitted to the Senate by President Harrison, but before it could be acted upon was withdrawn by President Cleveland, who sent James H. Blount to Hawaii as his special commissioner to investigate the situation. Upon his report that the revolution owed its success to the support of the United States minister and troops, the President made an earnest but unsuccessful attempt to restore the Queen's government.

Soon after President McKinley's inauguration, another treaty of annexation was signed, June 16, 1897, but was still pending in the Senate when war broke out with Spain. The friends of the treaty, fearing that it might not receive the necessary two-thirds vote in the Senate, introduced a joint resolution of annexation which, in view of the great military importance of the islands at that time, passed both houses by large majorities and was signed July 7, 1898. In the debate, the opposition argued that there was no constitutional right to acquire territory by joint resolution; that annexation involved the danger of statehood; and that the acquisition of non-contiguous territory, inhabited by an inferior race, was the beginning of a policy of imperialism.

The joint resolution declared that the "Hawaiian islands . . . are hereby annexed as a part of the territory of the United States;" and that until legislation by Congress all powers of the existing government should "be exercised in such manner as the President of the United States shall direct." The formal cession was accomplished Aug. 12, 1898, when these resolutions were accepted by President Dole on behalf of the Republic.

The act of Apr. 30, 1900, made the islands a fully organized territory; extended to them the provisions of the Constitution and the laws of the United States; and conferred American citizenship upon all persons who were citizens of Hawaii, Aug. 12, 1898, which included Chinese born or naturalized in the islands.

See ANNEXATIONS TO THE UNITED STATES; CHINESE IMMIGRATION; PACIFIC ISLANDS, DIPLOMATIC RELATIONS WITH; TERRITORIES OF THE UNITED STATES, ORGANIZED.

References: J. B. Moore, *Digest of Int. Law* (1906), I, 475–520; J. W. Foster, *Am. Diplomacy in the Orient* (1903), ch. iv, xi.

GEORGE H. BLAKESLEE.

HAY, JOHN. John Hay (1838–1905) was born at Salem, Ind., October 8, 1838. He was admitted to the Illinois bar in 1861, but never practiced. The same year he became one of Lincoln's private secretaries, later serving as adjutant and aide-de-camp; and in 1865 was brevetted colonel of volunteers. From 1865 to 1867 he was secretary of legation at Paris, and in 1867–68 chargé d'affaires at Vienna. In 1868 he became secretary of legation at Madrid, where he remained until 1870. From 1870 to 1875 he was an editorial writer on the New York *Tribune*. He then removed to Cleveland, Ohio, where he married a daughter of the wealthy Amasa Stone and was active in the presidential campaigns of 1876, 1880, and 1884. From 1879 to 1881 he was First Assistant Secretary of State. In 1881 he assumed the editorship of the *Tribune*, in the absence of Whitelaw Reid. In 1897 he was appointed ambassador to Great Britain, resigning in 1898 to become Secretary of State, which office he held until his death. The guarantee by the great powers of an "open door" policy in China, in 1899–1900; the supercession of the Clayton-Bulwer treaty by a new treaty with Great Britain, in 1901, giving the United States sole control of the isthmian canal; and the recognition of the Republic of Panama, in 1903, were the notable events of his secretaryship. He died at Lake Sunapee, N. H., July 1, 1905. He wrote, with J. G. Nicolay, *Abraham Lincoln: a History* (1890), 10 vols. See CANAL DIPLOMACY; OPEN DOOR; STATE, DEPARTMENT OF. References: B. Adams, "*John Hay*" in *McClure's Magazine*, XIX (1902), 173–182; J. B. Bishop, *John Hay: an Address delivered before the Alumni Assoc. of Brown University* (1906); E. Root, *Address at the Dedication of the John Hay Library, Brown University* (1910); P. L. Haworth, *Rutherford B. Hayes* (1906); J. F. Rhodes, "President Hayes' Ad-

ministration in the Light of Thirty Years" in *Century*, LXXIII (1909), 883–891.

W. MacD.

HAY-PAUNCEFOTE TREATIES. The first of the two treaties was signed February 5, 1900 by Secretary John Hay and Sir Julian Pauncefote. It was agreed that the United States Government should be free to construct an isthmian canal upon the general principles of neutralization set forth in the convention of Constantinople. The Senate, in ratifying the treaty, added amendments to the effect that the Clayton-Bulwer treaty was "hereby superseded," and that the provisions of the treaty should not apply "to the measures which the United States might find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order." Great Britain declined to accept these changes and the treaty therefore failed.

A second treaty was negotiated by the same plenipotentiaries and signed November 18, 1901, in which the principles of the Senate amendment were substantially included. This treaty was duly ratified and it was proclaimed February 22, 1902; and the way was thus cleared for negotiations with Columbia and subsequently with Panama.

See CANAL DIPLOMACY; CLAYTON-BULWER TREATY; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; INTERNATIONAL LAW, INFLUENCE OF THE UNITED STATES ON; NEGOTIATION OF TREATIES BY THE UNITED STATES; RATIFICATION OF TREATIES BY THE UNITED STATES; TERRITORY IN INTERNATIONAL LAW; TREATIES OF THE UNITED STATES.

References: J. B. Henderson, *Am. Dipl. Questions* (1907), 168; *Senate Ex. Docs.*, 56 Cong., 1 Sess., Nos. 160, 208 (1901), 2 Sess., No. 1337 (1902); J. B. Moore, *Digest of Am. Int. Law* (1906), § 366.

A. B. H.

HAYES, RUTHERFORD BIRCHARD. Rutherford B. Hayes (1822-1893), nineteenth President of the United States, was born at Delaware, Ohio, October 4, 1822. In 1845 he was admitted to the bar, and in 1849-50 established himself at Cincinnati. He served in the Union Army throughout the Civil War, and was brevetted major-general of volunteers. From 1865 to 1867 he was a Republican member of Congress, and from 1868 to 1872 governor of Ohio. In 1875 he was again nominated for governor, and was elected, the campaign, in which he declared against the Democratic policy of currency inflation, attracting national attention. In 1876 he was nominated for the presidency on the seventh ballot, James G. Blaine having been up to that point the leading candidate. The events of the famous contested election are elsewhere treated (*see* ELECTORAL COMMISSION). As a result of the decisions of the electoral Commission, he was, on March 2, 1877, declared elected, having been awarded 185 electoral votes against 184 for Samuel J. Tilden, the Democratic contestant. His administration saw the withdrawal of the last federal troops from the South, the resumption of specie payments in 1879, and improvement in the personnel of the civil service. He did not seek a reëlection in 1880, and devoted the remainder of his life to law practice and to various reform movements. He died at Fremont, Ohio, January 17, 1893. **See** ELECTORAL COMMISSION; PRESIDENTIAL ELECTIONS; RECONSTRUCTION. **References:** J. G. Wilson, Ed., *Presidents of the United States* (1894); E. E. Sparks, *National Development* (1907); P. L. Haworth, *Rutherford B. Hayes* (1906); J. F. Rhodes, "President Hayes' Administration in The Light of Thirty Years" in *Century*, LXXVIII (1909), 883–891.

HAYNE, ROBERT YOUNG. Robert Y. Hayne was born in Colleton district, South Carolina, 1781, and died at Asheville, North Carolina, 1839. Educated in the schools of Charleston, he studied law in the office of Langdon Cheves and was admitted to the bar in 1811. He served a short time in the War of 1812, after which he was attorney general of South Carolina for six years. Entering the United States Senate in 1823, he soon became prominent as an opponent of the tariff and in 1830 he was the logical spokesman of the South in the famous debate with Webster. In 1832 Hayne retired from the Senate to become governor of South Carolina during the conflict with the Federal Government about nullification. Upon the settlement of this controversy, he was made the president of the proposed Charleston and Cincinnati railroad and as such he urged upon the state a policy of internal improvements which brought him into conflict with Calhoun. **See** NULLIFICATION CONTROVERSY; SOCIAL COMPACT THEORY; STATE SOVEREIGNTY. **Reference:** T. P. Jervey, *Life and Times of Robert Y. Hayne* (1909).

W. E. D.

HAYTI. The island of Santo Domingo or Hayti is the second largest island of the West Indies. It was discovered by Columbus on his first voyage (1492) and named "La Isla Hispañola." The location of the earliest colonization in the new world, it belonged to Spain, then to France, and finally was divided into two independent governments called the Dominican Republic and Hayti.

Dominican Republic, between latitude 17° 37′ and 20° north, and longitude 68° 20′ to about 72° west (Greenwich) has an area of 19,325 square miles and a population of 673,611, about 34 per square mile. The present constitution, adopted in 1908, provides for a bicameral legislative system, senate and chamber of deputies. Senators are elected, one for each province for six year terms renewed by

thirds every two years; deputies for four years, one-half every two years. The executive is a president elected by indirect vote for six years (July 1, 1908) with a cabinet of seven ministers. The judiciary is composed of a supreme court, and lower courts. There are twelve provinces, the capital being Santo Domingo City. State religion is Roman Catholic.

Hayti, Republic, situated between latitude 17° and 20° north, and about longitude 72° to 74° 31′ west (Greenwich), has an area of 10,200 square miles with a population estimated at 2,000,000, about 196 per square mile. The present constitution was proclaimed in 1889 and provides for a bicameral legislative assembly, a senate and a chamber of representatives with six and three year terms respectively. The president, elected by the assembly for seven years, has a cabinet of six ministers. The judiciary is composed of a supreme court and courts of appeal. Hayti has five political divisions, the capital being Port au Prince. State religion is Roman Catholic. See HAYTI; DIPLOMATIC RELATIONS WITH.

References: J. I. Rodriguez, *Am. Constitutions* (1905), II, 49–88; Pan American Union, *Publications.*

ALBERT HALE.

HAYTI, DIPLOMATIC RELATIONS WITH. The island of Hayti was discovered by Columbus on his first voyage and became the seat of the first European colony in the new world. Early in the seventeenth century French buccaneers took possession of the western end of the island and became so firmly intrenched that at the peace of Ryswick in 1697 this part of the island was ceded to France. At the beginning of the French Revolution the population of the French colony was about 500,000, of whom 38,000 were of European origin, 28,000 free people of color, and the rest negro slaves. In 1790 the French National Assembly granted full rights of citizenship to the free blacks and mulattoes. This act led to serious race troubles which became more serious when it was repealed the following year. The slaves rose in insurrection and finally established the Republic of Hayti with Toussaint L'Ouverture, a full-blooded negro and former slave, as chief. Napoleon, in 1802, sent his brother-in-law, General Leclerc, to reduce the colony. He treacherously secured the person of Toussaint and sent him to France where he died in a dungeon. The insurrection now broke out afresh. Leclerc and a large number of his army fell victims to the yellow fever, and the French were forced to abandon the island in 1803. The Spanish part of the island later declared its independence and in 1822 was united with Hayti. In 1844 the Spanish colony resumed its independence as the Republic of San Domingo.

The United States was far from being a disinterested spectator of these events, but until the administration of Lincoln refused to extend formal recognition to either of these republics, the main reason being that they were founded on slave insurrections. In President Lincoln's first annual message he declared that he saw no reason "why we should persevere longer in withholding our recognition of the independence of Hayti," and by act of June 5, 1862, he was authorized to accredit a representative as "commissioner and consul-general."

In 1882 and again in 1884 the government of Hayti made a proposal for the cession of Mole St. Nicholas to the United States as a naval station, but the offer was declined. Later, however, in 1891 Rear-Admiral Gherardi was sent as a special commissioner to Hayti to coöperate with the United States minister in securing the lease of a coaling station. The Haytian Government refused to entertain the proposal and much excitement was caused by the presence of the American fleet at Port au Prince.

Frequent revolutions and changes of government, repudiation by new governments of the debts of their predecessors, harsh and unjust treatment of foreigners, the seeking of asylum in the American consulate by defeated political leaders, are the questions that continually claim the attention of the United States Government in its diplomatic relations with Hayti.

See DRAGO DOCTRINE; HAYTI; WEST INDIA TRADE.

References: J. B. Moore, *Digest of Int. Law* (1906), I, 107, 116, 250, 278, II, 807, V, 729, VI, 24, 433, 475; E. J. Payne, *Hist. of European Colonies* (1889), ch. xv; S. St. John, *Hayti, or the Black Republic* (1884), ch. iii; *Foreign Relations,* 1866, II, 499–526, 1868, II, 354–360, 1875, 686–748, 1888, 884–977, 1898, 387–399, 1899, 374–407.

JOHN H. LATANÉ.

HEAD TAX ON IMMIGRANTS. See IMMIGRANTS, HEAD TAX ON.

HEADLANDS THEORY. Under the fishery treaty of 1818 with Great Britain the right of inshore fishery in Canadian waters was forbidden, except so far as expressly allowed by the treaty, or ceded by later agreement. This led to long discussions as to precisely what was the water boundary of those coasts. The Americans contended that it was a sinuous line, three marine leagues distant from the low water mark, and parallel with the shore, the British contention was that a small bay, even if more than six miles wide, included as territorial water the expanse as far out as a straight line drawn from three miles off one headland to three miles off the other headland. The position of the United States in holding jurisdiction over Chesapeake and Delaware bays, though the entrances are more than six miles wide, was an argument against their claim. The question has never been definitely

adjusted but in the decision of 1911 in the Newfoundland Fisheries dispute (*see*) the arbitrators did not allow that the British had territorial jurisdiction outside the sinuous line. See ARBITRATIONS, AMERICAN; FISHERIES, INTERNATIONAL; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; THREE-MILE LIMIT; WATER BOUNDARIES AND JURISDICTION. References: J. B. Moore, *Digest of Int. Law* (1906), I, 699–800, *passim*, *Arbitrations* (1898). A. B. H.

HEALTH, PUBLIC, REGULATION OF

Complexity.—Local, state and national authorities all have jurisdiction in the regulation of public health, so that the interweaving and overlapping of these authorities, their relations with private health organizations and with the work of corporations or employers for the health of their employees, make a puzzling and complicated network. This article will undertake: (1) an outline of the development and present function of (a) national, (b) state, (c) municipal and county authorities; (2) a sketch of the most important lines of extension along which all three of these bodies are advancing side by side; (3) brief comment on the enforcement of health regulations and on the relation between public and private health agencies. Throughout the whole discussion should be kept in mind the modernity of the whole matter, its almost indefinitely wide scope of application under the police power, and the very rapid replacement of private by public activities for the cure and prevention of disease.

National Health Authorities.—Congress enacted in 1799 that

> the quarantines and other restraints established by the health laws of any state shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several revenue cutters, and by the military officers commanding any fort or station upon the seacoast: and all such officers of the United States shall faithfully aid in the execution of such quarantines and health laws according to their respective powers and within their respective precincts, and as they shall be directed from time to time by the Secretary of the Treasury.

The relations of the national officials, above referred to, with the local officers were made more intimate owing to the fact that vessels detained in quarantine were sometimes allowed, by the health laws of the local port of entry, to discharge their cargoes which then came under the jurisdiction of the federal collector of the port and so of the Secretary of the Treasury. During the unloading of a vessel in quarantine, therefore, federal and local officers were necessarily in close relations.

This body of legislation accounts for the otherwise puzzling fact that the chief public health activities in the United States fall under the Treasury Department, where one would least expect to find them.

So far as can be ascertained the above legislation constitutes, until 1893, practically the sole statutory basis for any national activities concerned with health, leaving out of account the medical departments of the Army and Navy. Gradually, however, medical responsibilities have grown up in a variety of other departments of the national Government so that at the present time health work of greater or less importance is carried out in no less than six different departments. The first group includes: (1) the Department of the Treasury; (2) the Navy Department; (3) the War Department. The Department of the Interior constitutes a second group, because its Bureau of Indian Affairs controls a considerable number of physicians whose activities in the schools and hospitals for the Indians, are sometimes very important. Through the Geological Survey also, which is under this Department, all matters concerning the pollution of inland waters which have interstate distribution are considered.

A third body of health activities with extensive responsibility comes under the Department of Agriculture, distributed among three bureaus. (1) The Bureau of Chemistry is concerned, under the Food and Drug Law of 1902, with the enforcement of this law in relation to the adulteration of food and drugs. (2) Under the Bureau of Entomology investigations have been made and reports prepared on the distribution and habits of various species of mosquitoes, their possible danger through their power to transmit malaria and yellow fever, and the methods of checking or exterminating such insects. (3) The Bureau of Animal Industry deals with all interstate meat traffic, and spends $3,000,000 a year (1910) on the inspection of such meat. The dairy division of this bureau seeks by investigation and inspection to purify and improve milk and dairy products. The same bureau has also assumed the responsibility for the investigation of the contagious diseases "of man and animals," man being here included since some of the diseases more frequent in the lower animals also occur in man.

A fourth group comes under the Department of Commerce and Labor, through three important matters concerning the public health: (1) the Bureau of Vital Statistics as a part of the work of the Census Bureau; (2) the inspection of all immigrants, together with the hospitals and detention stations provided for them; (3) *Monthly Bulletin* of the Bureau of Labor Statistics, which contains information regarding factory legislation and thus deals

with one of the most important branches of the public health, *viz.*, industrial hygiene.

It thus appears that the health activities in the United States are now divided among seven departments: the Interior, Treasury, Agriculture, Commerce, Labor, War, Navy.

Operation of Quarantine.—The Marine Hospital Service, which has gradually grown up under the Treasury Department, was of comparatively slight importance to public health until the legislation approved February 15, 1893, and subsequently amended and extended by acts approved August 12, 1894, March 2, 1901, and June 19, 1906. Under these acts the maritime quarantine administration, which prior to 1893 was entirely local, has become national, many state stations having been voluntarily surrendered to the Government, others supplanted by the general Government because of failure to comply with Government regulations. There are now (1913) 44 such national quarantine stations administered under the Marine Hospital Department which after the law of July 1, 1902, was known as the Public Health and Marine Hospital Service until Aug. 14, 1912, when it became the Public Health Service.

There remain, however, four ports, New York, Boston, Philadelphia and Providence, still governed by a state quarantine officer. These local officers are, nevertheless, obliged to enforce the national regulations; are subject to inspection by the national officers; and may be replaced by an officer detailed by the President for that purpose in case they fail or refuse to comply with United States regulations. Under the national quarantine law of 1893, already referred to, a penalty of $5,000 was imposed upon any vessel from a foreign port seeking to enter a port of the United States without a consular bill of health. In the principal Japanese and Chinese ports these bills of health are signed by those national officers of the Public Health Service who are attached to the United States consulates. These officers keep themselves informed of the prevalence of contagious diseases in these cities and in the surrounding country. Medical officers are also located at Calcutta, Naples, Libau, and at various ports in South America, Mexico, and Cuba. The salaries of these officers are paid from a fund annually appropriated by Congress and known as the "epidemic fund," which is officially intended solely for the prevention of the introduction and spread of cholera, yellow fever, smallpox, typhus fever and plague.

Epidemics and Contagious Diseases.—Whenever epidemic diseases threaten to spread from one state to another, officers of the Public Health service may be active in suppressing such epidemics, as for example, the yellow fever epidemic of New Orleans in 1897 and 1905, the bubonic plague in California in 1900, 1907 and 1908. At the present time (1913) these officers are engaged in the extermination of bubonic plague among the ground squirrels of California. These operations are conducted under two laws, one is the national quarantine act of 1893, which contains provisions for interstate as well as for maritime quarantine; the other is the so-called epidemic fund above referred to, which contains a provision making it available for the aid of state and local boards of health.

Under the quarantine law of 1893 and the act of Congress approved March 3, 1901, providing for the building of a hygienic laboratory, investigations are made at the request of state health authorities in diseases other than those named in the epidemic law, for example, typhoid fever, infantile paralysis, cerebrospinal meningitis, hookworm disease, and pellagra.

In an act approved July 1, 1902, the Secretary of the Treasury, working directly through the Bureau of Public Health Service, has the power to license all establishments engaged in the production of vaccines, antitoxins, and serums intended for sale in interstate traffic. Variations in the strength and the occasional impurity of these products made such a system of license necessary. Thirteen state establishments are now licensed in the United States and ten in foreign countries.

The division in pharmacology under the hygienic laboratory has done much work in the standardization of drugs.

Among the branches of the Public Health Service, at present of minor importance, is that which constituted its entire being up to 1893, namely, the maintenance of marine hospital relief stations upon the coast, lakes, and rivers of the United States, twenty-two such hospitals being now in existence. They serve as sanitary outposts whence trained officers can be mobilized at the point of danger in times of epidemics. These hospitals have nothing to do with the Navy Department but are nominally a part of the revenue service of the Treasury Department. The most important of them is the sanitarium for consumptive seamen at Fort Stanton, New Mexico.

It is obvious from this account that the public health activities of the national Government date practically from 1902. It is also obvious that the health activities of the Government are ludicrously scattered and disorganized, and should be combined in a single bureau or department as was recently recommended by President Taft.

State Boards of Health.—The first state board of health was that of Massachusetts, established in 1869; in the following ten years 18 more state boards were organized; from 1880 to 1890, 14; from 1890 to 1900, 7; since that time 7 more; a total of 47. Even at the present time some of these state boards are little more than a name. In certain states all public health activities are still performed by city or county boards, and even these may amount to

very little. State medicine, as distinguished from municipal medicine is then a matter of 40 years' growth. It has been called into activity, like the work of local boards, chiefly by the occurrence of alarming local epidemics.

Aside from their powers and duties in relation to local epidemics, the functions of the state boards of health have been a gradual development of the police power in the abatement of "nuisances," which, with quarantine, forms the starting point of all public health work. The development of the conception of what constitutes a "nuisance" is a most interesting study which can only be very briefly summed up here. From Blackstone's definition of a nuisance one would never gather that it had any special concern with public health. For him a nuisance was almost any sort of injury, but later its meaning seems to have gradually and unconsciously changed until it became associated with a variety of conditions having in common the fact that they produce a bad smell. The annoyance therefrom, joined with the common though erroneous belief that a bad smell reveals the presence of some cause for disease, resulted in the prominent part which the "abatement of nuisances" has played in public health work throughout its history. Despite the more recent discovery that smells are in themselves of no injury to health, health work has followed the paths of popular prejudice and demand, and continues to be largely and very unreasonably occupied with the abatement of odoriferous nuisances.

Gradually, however, the conception of a nuisance has been developed to include not only ill-smelling pools, ditches, privies, drains, water courses and deposits, but also (a) animals so kept as to annoy their neighbors through the production of disagreeable odors; (b) houses so overcrowded as to be injurious to the health of the inmates, factories so unclean, ill ventilated, or overcrowded as to be dangerous to their inmates' health; (c) furnaces or chimneys which do not endeavor to consume their own smoke. These extensions in the conception of nuisances have led to a great widening of the conception of the police power in its relations to the protection of public health. Many states now include under nuisances rank coarse weeds and other vegetation, and ill drained marshes which favor the breeding of mosquitoes. In close connection with this idea of the abatement of nuisances is the power now generally conceded to state boards of health and universally so conceded to the local boards, for preventing the pollution of the sources of public water suplies and ice supplies.

The organization and duties of the state boards of health differ very materially in different states. In Minnesota the board's powers are probably at the maximum, since they have the power to adopt, alter and enforce reasonable regulations for the preservation of the public health applicable to the whole or any portion of the state. Upon the approval of the attorney general and the due publication of these regulations they have the force of law, unless they conflict with a city statute or with a charter or ordinance of a city of the first class upon the same subject. Apparently these regulations may entirely supersede the ordinances of smaller cities and towns. If any town fails to appoint a local board of health or if the officers of this board are inefficient, the state board may put in appointees of its own temporarily.

In most of the states the powers of the state board in relation to the local boards are chiefly advisory and in some states these advisory powers have great force despite the absence of any power to compel compliance with such advice. The single commissioner of health employed by the state of Pennsylvania has powers almost equal to those of the Minnesota board. Yet the growth of this power in Pennsylvania has been surprisingly rapid, for in 1876 there was absolutely no state board of health in that state. In that year 36 out of the 48 states appropriated absolutely no money for the support of the state board of health, and no state except Massachusetts appropriated more than $2,000 a year.

Local and Municipal Boards of Health.—In a few states, county boards of health are provided in order that there may be some sort of health jurisdiction in the more sparsely settled districts, but their activities are very slight. The first local boards of health were those of Boston and Salem, established in 1799. Marblehead, Plymouth, Charlestown, Lynn and Cambridge followed suit soon after; but about twenty years later most of these boards of health were merged in the common councils of the towns, and this arrangement remains up to the present day in the majority of states and towns in the United States—which is tantamount to saying that in the majority of states and towns of the United States the board of health is entirely inefficient.

Previous to the establishment of these boards, local health activities were confined to the enforcement of legislative acts nominally covering the state but practically intended for application to a particular city or port, and designed to prevent the spread of smallpox or yellow fever.

Pennsylvania passed, in 1700, "an act to prevent sickly vessels coming into this government." In 1809 it was made compulsory by law in Massachusetts that a committee be chosen in each town to superintend vaccination. The chief powers of local boards were to examine into all nuisances with power to remove them; the widening of the conception of a nuisance together with the general idea of suppressing contagious diseases have rapidly enlarged their powers within the last twenty years. Thus, local, state, and national author-

ities have advanced simultaneously and along roughly parallel lines.

Analysis of Health Activities.—Approaching the subject from the point of view of the functions of the public authorities having jurisdiction over health, the following classification should be made, all activities branching out from three main stems:

(1) *Quarantine against contagious diseases*, including efforts to prevent or abolish such diseases by:

(a) Investigation of their causes, their prevalence (vital statistics) and their location (tenement house inspection, factory inspection, etc.).

(b) Compulsory isolation of the sick in hospitals and sanitaria or at home.

(c) Free treatment and municipal nursing.

(d) Public preventive medicine; state or national distribution of vaccines, antitoxines, quinine, etc.).

(e) Medical examination of immigrants and school children.

(f) Care of the dead; regulations concerning the embalming, transportation and burial.

(g) Free municipal diagnosis laboratories for the detection of disease germs in sputa, cultures, etc.

(2) *Abatement of Nuisances*, starting with the removal of ill-smelling matter, the suppression of nuisances has come to include:

(a) Provision (municipal, state or national) for pure water supplies and proper systems for the disposal of sewage, garbage, dust, ashes and smoke.

(b) Suppression of offensive trades and of offenses against public health or public morals in any trade. Hence come the numerous laws for the ventilation of factories, for protection of machinery, against child labor, for the limitations of women's hours of work.

(c) Prevention or suppression of unsanitary housing conditions (through building laws and inspectors).

(d) Control of the sale and storage of explosives, fire works, etc.

(e) Control or suppression of the sale of impure foods, poisonous drugs, drugs used to produce abortion, tobacco (to minors), alcoholic liquors, unclean or diluted milk.

(f) Public teaching of the dangers connected with the use of these substances—teaching now extended to cover all hygiene—and the suppression of printed matter and advertisements detrimental to public health and public morals.

(3) *Regulation of Medical Practice* (N. H. 1875) through the examination and registration of doctors, osteopaths, midwives and nurses (*see* PROFESSIONS AND CALLINGS).

Enforcement.—In the application of these complicated functions the local authorities enforce their regulations least, and national authorities most, while state authorities are intermediate in this respect. In 1900 the denial by the authorities of San Francisco and California that there was any bubonic plague in the state, compelled the national authorities, under their authority to prevent the interstate spread of contagious disease, to investigate and demonstrate the existence of the plague and to take proper measures for its suppression. This was a most important step; it brought national medicine suddenly and permanently to the front, demonstrated its value and authority and so stimulated public opinion that state and local authorities all over the country began to do better work.

The work of the private, voluntary associations against tuberculosis, against infant mortality, bad housing and child labor has been of great value in the enactment of important legislation and still more in securing its enforcement through the organization of public opinion. The labor organizations have also done much good in this direction. Indeed, a large part of recent "labor legislation" concerns the public health. In the factories each workman is sometimes a zealous volunteer inspector for the enforcement of factory laws relating to hygiene. Medical men and medical societies have been slow and timid in their support of the health laws and health reforms of the country; here again the national bodies do the best and the local bodies the poorest work.

Conflict of authority between different health officials is increasingly frequent. Minority resistance, as to vaccination or medical examination of school children, leads to miniature riots or, more often, to a back-down of the health authorities. The powers of state health boards may be overridden by national authorities wherever (as in California in 1900) an interstate health risk looms up. There are many such risks, since foods, drugs, contagious diseases, water supplies, offensive printed matter, and other dangers to public health are constantly crossing state lines. The supposed interest of a single community may lead it to endanger the health of many states and when the central government interferes bad feeling is aroused. Nevertheless the country is getting used to such assertion of authority by the national authorities and begins to recognize their necessity.

Local health boards (municipal for the most part) though strictly creations of the state, are often very jealous of anything which they consider interference on the part of state authorities. As a rule the state authorities recognize this and by confining themselves to advisory functions, exercised in a patient and friendly spirit, avoid conflict.

Degree of Success in Public Health Regulation.—The greatest triumphs of public health work in this country have been achieved through action by the nation itself—action carried out upon a large scale and without regard to local obstructions. Such triumphs are the control of malaria on the Canal Zone, the extermination of yellow fever in the southern

states and in Cuba, the curbing of hookworm disease in Porto Rico, the arrest of plague and cholera at the ports of entry, and the nation-wide improvements in food and drugs following the enactment and enforcement of the Pure Food and Drug law of 1902.

For these successes there are two main reasons. They are based on valid scientific discoveries; and they are not obstructed by local selfishness. The failures of public health regulation occur under the opposite conditions, *i. e.*, when there is no sufficient scientific basis behind the regulations or when local selfishness wins the day. For precisely these reasons a considerable part of our ill-judged, hastily-drafted legislation remains a dead letter. Medical opinion in the field of public health is subject to frequent sudden and bewildering changes. The "science" of yesterday is the exploded superstition of today. Premature application of scientific principles insufficiently worked out, leads to a discrediting of all medical authority. For example the principles of ventilation, which were current five years ago and upon which a great deal of legislation has been based, have been altogether upset lately. The amount of oxygen and CO_2 in the air is no longer believed to be important as an indication of good or bad ventilation.

On the other hand, local health boards stand in awe of "business interests," parental prejudices and other anti-social forces, which fear makes many well-founded health laws useless. These obstructions are so powerful that one of the best local health officers in the country now believes that the education of public opinion is his most important function, and spends a great deal of time and money in "publicity work" through lectures, newspapers, and magazines.

Public health work will be improved as fast as the experts learn caution in the promulgation of half proved principles, and the public learns what is reliable in the motley assortment of truth, probabilities, and prejudices now called "hygiene."

See Abattoirs; Baths, Public; Building Laws; Cemeteries; Children, Public Care of; Contagious Diseases; Dispensaries, Free; Drainage; Garbage, Removal of; Hospitals, Public; Hotels and Lodging Houses, Regulation of; Insane, Public Care of; Lodging Houses, Public; Markets, Public; Markets, Regulation of; Meat Inspection; Medicine and Surgery, Bureau of; Municipal Housing; Nuisances, Abatement of; Playgrounds; Poverty and Poor Relief; Pure Food; Quarantine; School Hygiene; Sewers and Sewage Disposal; Social Evil, Regulation of; Streets; Tenement House Regulation; Tobacco Legislation; Tuberculosis, Care and Regulation of; Water Supply.

References: F. R. Packard, *History of Medicine in the United States* (1901), ch. x; H. I. Bowditch, *Hygiene in America* (1877); Walter Wyman, *Public Health Reports*, XXV (1910) 1303–1313; C. V. Chapin, "Sanitary Legislation in the United States Enacted during 1905" in Rhode Island State Board of Health, *Special Bulletin*, 1905; *Am. Year Book of 1911*, 397, 417, and year by year. Richard C. Cabot.

HEELERS. The adherents of a local or ward political worker, whom they support in the primary, assist in rounding up the voters on election day and to whose orders they are always amenable—they are always at the "heels" of their leader. **Reference:** T. Roosevelt, "Machine Politics in New York City" in *Am. Ideals* (1897) O. C. H.

HENCHMEN. One of the necessary elements of a political machine—the lieutenants or vassals of a political boss (*see*), who obey his commands, deliver to him the support of a larger body of adherents and in turn receive political advancement or personal profit. See Machine, Political; Organization.

O. C. H.

HENRY DOCUMENTS. The correspondence between Sir James Craig, Governor General of Canada, his secretary, and Lord Liverpool, and John Henry, relative to Henry's investigation into Federalist discontent in New England. President Madison paid Henry $50,000 for these documents which were submitted to Congress, March 9, 1812, with the result that they increased the popular antagonism to Great Britain. See Federalist Party. O. C. H.

HENRY, PATRICK. Patrick Henry was born at Studley, Hanover County, Virginia, May 29, 1736, and died at Red Hill, Charlotte County, Virginia, June 6, 1799. Henry's early training was received in his father's classical school near Hanover court house. He married early, failed as a farmer and "storekeeper," studied law and was admitted to the bar in 1760. He was immediately successful, and in 1763 won in the Parson's Cause (*see*) colony-wide fame as a popular speaker. The next year he was elected a member of the house of burgesses where he ardently opposed the Stamp Act (May, 1765), and became a leader of Virginia. During the following decade he organized the great up-country party which refused all compromise with the Crown and which committed Virginia to the Revolution in 1774–76. Henry was a member of the first Continental Congress and on his return to Virginia he urged that the people be armed and himself set a warlike example by raising a regiment of troops and leading them to Williamsburg where he compelled Governor Dunmore to pay the colonial treasury for gunpowder which had been taken from the colony's arsenal. He was now made colonel of the first Virginia regiment but he saw no actual mili-

tary service. As a member of the first Virginia constitutional convention he exercised much influence, and was governor of the new commonwealth from 1776 to 1779 and again from 1784 to 1786. He was first of American "war governors" and he exercised potent influence in bringing the Revolution to a successful issue. From 1786 to 1788 he opposed the formation of a stronger Federal Government, and he was a principal figure in the Virginia convention of 1788 where he almost succeeded in defeating the nationalists. But he gave his support to the second Washington administration and during the closing years of his life he was an ardent Federalist. See REVOLUTION, AMERICAN, CAUSES OF; REVOLUTION, AMERICAN, SIGNIFICANCE OF. References: W. W. Henry, *Life and Writings of Patrick Henry* (1891); M. C. Tyler, *Patrick Henry* (1887). W. E. D.

HEPBURN ACT. See INTERSTATE COMMERCE AND CASES.

HERMITAGE. The residence of President Andrew Jackson (*see*), near Nashville, Tennessee. O. C. H.

HICKORY POLE CANVASS. The presidential canvass of 1828 was so called because the hickory was adopted as the emblematic tree, and the hickory pole was the only "official" flag-pole of the Democratic party, adopted in honor of the Democratic candidate, Jackson, whose nickname was "Old Hickory". See DEMOCRATIC PARTY; JACKSON, ANDREW; OLD HICKORY. O. C. H.

HIGHER LAW. These words were used in Congress by William Henry Seward (*see*) of New York, March 11, 1850, in the debates on the Compromise of 1850 (*see*). Declaring that the new west should be made free and not slave territory, he said: "The Constitution regulates our stewardship; the Constitution devotes the domain to union, to justice, to defence, to welfare and to liberty. But *there is a higher law than the Constitution*, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part, no inconsiderable part, of the common heritage of mankind, bestowed upon them by the Creator of the Universe." These words were afterwards used as terms of reproach to the anti-slavery men on the ground that they implied that "higher law" should be obeyed and the constitutional rights of the South disregarded. See SLAVERY CONTROVERSY. References: T. K. Lothrop, *William Henry Seward* (1899), 86–89; J. F. Rhodes, *Hist. of U. S.*, I (1893), 165–164. A. C. McL.

HIGH-MINDED FEDERALISTS. A contemptuous nickname given a small division among the remnant of the Federalist party in New York which, in 1820, refused to support the Clintonions with whom they had practically been fused after 1815—so called because they continually referred to themselves as "high-minded men." See FEDERALIST PARTY. O. C. H.

HIGH SCHOOLS. See SCHOOLS, HIGH.

HIGH SCHOOLS, COMMERCIAL. See SCHOOLS, HIGH, COMMERCIAL.

HIGH SCHOOLS, MECHANIC ARTS. See SCHOOLS, HIGH, MECHANIC ARTS.

HIGH SCHOOLS, TOWNSHIP. See SCHOOLS, HIGH, TOWNSHIP.

HIGH SEAS. The high or open seas is that part of the water area of the earth which is beyond the exclusive jurisdiction of any state; not to be appropriated by any state but open to all. The high sea is now generally held to include the water beyond the three-mile limit or marine league from the low water mark. This limit is based upon the theory put forth by Bynkershoek in 1702 to the effect that control over the adjacent waters could be claimed so far as it could be effectively exercised by the force of arms, which was in his day the three nautical mile range of cannon. The British Territorial Waters Jurisdiction Act of 1878 adopted the principle for Great Britain.

This limit is now recognized, generally, although extended claims to jurisdiction over wide areas of open water have been made before and since Bynkershoek's proposition. In early times popes sometimes granted great water areas to sovereigns; Louis XIV claimed the Mediterranean; England, the neighboring seas; Venice, the Adriatic; the United States, so late as 1893 claimed special jurisdiction over Bering Sea (*see*), which was not admitted by arbitrators.

For purposes of admiralty jurisdiction of a state over its domestic affairs, the high seas includes all waters of the ocean or enclosed seas beyond the low water mark; while for international law the limit of the high seas would be a marine league farther out into the ocean.

See ADMIRALTY; EXTRATERRITORIALTY; SEAL FISHERIES; THREE-MILE LIMIT; VESSELS; WATER BOUNDARIES.

References: J. B. Moore, *Digest of Int. Law* (1906), I, 741, II, 886; U. S. *v.* Rodgers (150 *U. S.* 249). GEORGE G. WILSON.

HIGHWAY. Name applied to public roads, probably because the English roads were banked up by throwing in material from the ditches. In many states highway is the ordinary term used in statutes for designating public avenues of transit; there are highway com-

missioners, highway surveyors, etc. See ROADS; STREETS. A. B. H.

HIGHWAY COMMISSIONER, STATE. The state highway commissioner is a necessary part of the good roads movement (*see*). The commissioner is usually appointed by the governor, and has extensive powers over formulating plans and administering funds for roads. With the increase in state construction of roads, the commissioner's duties are greatly increasing. He maps the roads of the state, ascertains the amount of traffic, decides what roads shall be constructed or repaired by the state, and coöperates with the local authorities in many road problems. Experiments in road-making by the state are usually under the immediate direction of the state commissioner. See COUNTY GOVERNMENT; ROADS; STREETS; TOWNS AND TOWNSHIPS. References: Department of Agriculture, Office of Good Roads, *Reports, Circulars, etc.;* statutes of different states. T. N. H.

HILDRETH, RICHARD. Richard Hildreth (1807–1865), historian and publicist, was born at Deerfield, Mass., June 22, 1807. In 1830 he was admitted to the bar, and practiced for two years at Newburyport and Boston. In 1832 he became associate editor of the *Boston Atlas,* a daily paper, the organ of Rufus Choate, Caleb Cushing, and other leaders of the rising Whig party. Here his editorial contributions attracted wide attention. In the winter of 1837–38 he was Washington correspondent of the *Atlas.* In 1840 he supported the candidacy of W. H. Harrison, and wrote Harrison's campaign biography. His health requiring a milder climate, he went, in 1840, to Demerara, British Guiana, where he edited the *Guiana Chronicle* and *Royal Gazette,* newspapers which favored the abolition of slavery by Great Britain; and also compiled the colony laws. Later he was a member of the staff of the New York *Tribune.* In 1861 he was appointed consul at Trieste. He died at Florence, Italy, July 11, 1865. A prolific writer on politics and history, his fame rests principally upon his *History of the United States* (6 vols., N. Y., 1849–56), the first comprehensive narrative on a large scale. It is a monument of learning and research, written, however, in an annalistic style, and with a Federalist basis. The narrative ends with 1812. Of his other writings the best known are: *Despotism in America* (1854), *Theory of Politics* (1853), Life of *William Henry Harrison* (1839), *The Slave; or Memoirs of Archy Moore* (7th ed., 1845), reissued as *The White Slave* (1852).

W. MACD.

HILL, DAVID B. David B. Hill (1843–1910), born in Havana, N. Y., August 29, 1843, first achieved influence in the politics of New York as a lieutenant of Samuel J. Tilden. In 1871 and 1872 he was a member of the New York assembly, and in 1882 he was elected by the Democrats to the lieutenant-governorship of the state. Upon Cleveland's resignation of the governorship in January, 1885, in anticipation of his assumption of the presidency, Hill succeeded to the higher office, and to it he was elected for a full term in the same year and again in 1888. From 1891 to 1897 he was a member of the United States Senate. In 1892 he received the support of the New York delegation for the Democratic presidential nomination, but the tide of public favor could not be turned from Cleveland. In 1894 Hill was defeated for the governorship of New York by Levi P. Morton. In 1896 he opposed the Bryan silver plank of the Democratic platform, but in 1900 he was one of those who seconded the nomination of Bryan at the Kansas City convention. Upon the last-mentioned occasion he might have received without contest the vice-presidential nomination, but he refused to permit his name to be used. He died at Albany, October 20, 1910. See DEMOCRATIC PARTY; NEW YORK.

F. A. O.

HILL, JAMES JEROME. James J. Hill (1838) was born near Guelph, Ont., September 16, 1838. From 1856 to 1865 he worked in steamboat offices at St. Paul, Minn. In 1865 he became agent of the Northwestern Packet Company, and in 1879 formed the Red River Transportation Company, "the first to open communication between St Paul and Winnepeg." In the meantime he had, through a syndicate, got control of the St. Paul and Pacific Railroad, reorganized as the St. Paul, Minneapolis and Manitoba Railway Company. Of this road he was general manager from 1879 to 1882, then vice-president, and after 1883 president. His next undertaking was the Great Northern Railway, of which he was the chief promoter and builder, and in which the St. Paul, Minneapolis and Manitoba Railway Company was merged in 1890. In 1893 he became president of the Great Northern system, a position which he held until 1907, when he retired, retaining, however, the chairmanship of the board of directors. He was the chief agent in the organization of the Northern Securities Company, chartered November 13, 1901, to control the Great Northern and Northern Pacific railroads. Such control was held by the United States circuit court for the district of Minnesota to be in violation of the anti-trust act of 1890; and in 1904 the judgment was affirmed by the supreme court (Northern Securities Company *vs.* United States, 193 *U. S.* 197). In addition to his services as railroad builder and promoter, he has interested himself in the agricultural and commercial development of the Northwest, particularly in Minnesota, Oregon and Washington. See NORTHERN SECURITIES CASE; RAIL-

ROADS, REGULATION OF. References: M. H. Severance, "Character Sketch of the President of the Great Northern Railroad" in *Review of Reviews*, XXI (1900), 669–678; J. Moody and G. K. Turner, "Multimillionaires of the Great Northern System" in *McClure's*, XXXVI (1910), 123–140. W. MACD.

HITCHCOCK, FRANK HARRIS. Frank H. Hitchcock (1867–) was born at Amherst, Ohio, October 5, 1867. In 1894 he was admitted to the bar of the District of Columbia, and in the same year was appointed chief of the division of foreign markets in the Department of Agriculture. In 1903 he was made chief clerk of the Department of Commerce and Labor. In the campaign of 1904 he was assistant secretary of the Republican national committee, and in 1905 was appointed First Assistant Postmaster General. As chairman of the Republican national committee in 1908, he directed the presidential campaign of that year. In 1909 he was appointed Postmaster General, retiring March 4, 1913. The establishment of postal savings banks and a parcel post, together with the inauguration of some important reforms in the business methods of the Department, were among the fruits of his administration; but his extreme economies caused the domestic postal service as a whole to deteriorate, especially in the larger cities. See POSTAL SYSTEM OF THE UNITED STATES.

W. MACD.

HOAR, GEORGE FRISBIE. George F. Hoar (1826–1904) was born at Concord, Mass., August 24, 1826. He was admitted to the bar and began practice at Worcester. In 1852 he was elected to the Massachusetts house of representatives as a Whig, and in 1857 entered the state senate as a Republican. In 1869 he was elected to Congress, holding his seat in the House until 1877. In the Belknap impeachment, in 1876, he was one of the managers on the part of the House; and he also served as a member of the Electoral Commission of 1877. In the latter year he was elected United States Senator, and held the office continuously until his death. Throughout most of his career he was a strong supporter of Republican policies, but he was admittedly a statesman rather than a politician, and took high rank as a constitutional lawyer. He was chairman of the Massachusetts Republican conventons of 1871, 1877, 1882 and 1885, a delegate to the national conventions from 1876 onward, and chairman of the convention of 1880. After the war with Spain, in 1898, he sided with the anti-imperialists. He died at Worcester, September 30, 1904. See REPUBLICAN PARTY; SENATE OF THE UNITED STATES. References: G. F. Hoar, *Autobiography of Seventy Years* (1903); E. E. Sparks, *National Development* (1907); D. R. Dewey, *National Problems* (1907); J. H. Latané, *Am. as a World Power* (1907); H. C. Lodge, "Senator Hoar" in *A Frontier Town and Other Essays* (1906). W. MACD.

HOBBES, THOMAS. See POLITICAL THEORIES OF ENGLISH PUBLICISTS.

HOLDING COMPANIES. A holding company is a corporation organized for the purpose of acquiring the stocks and other securities of other companies. These securities are obtained either by direct exchange of its own stocks and bonds, or by their sale for cash, which is then used to purchase the desired securities. The ownership of the stocks of various companies gives to the holding company the right to elect their boards of directors and so to dominate their policy. Whenever, for any reason, it is desired to unite two or more corporations, and where the laws prevent direct union, the holding company is the device most frequently employed.

The principal use of the holding company in the United States has been to effect a combination of allied enterprises, which could not be accomplished by the use of any one of the corporations which it is intended to include (*see* TRUSTS). Holding companies are also organized for purely financial reasons. Examples of the financial holding company are the Electric Bond and Share Company, and the Electrical Securities Company, both controlled by the General Electric Company. These companies advance money to new projects—water power and electric railway developments—taking in payment the securities of these new companies. They use these securities as collateral for loans, and by the ownership of stock, control the management of these various enterprises. The North American Company and the American Cities Service Company are other examples of holding corporations organized to own stocks of public service corporations located in different cities. These companies finance the purchases of stocks by pledging the stocks and such bonds as they may receive in return for cash advances to their subsidiaries as collateral for long time liens. The number of these companies is increasing and a demand has arisen in some quarters for their prohibition.

See FRANCHISES, CORPORATION, FINANCIAL ASPECTS OF; FRANCHISES, CORPORATION, LEGAL ASPECTS OF; PUBLICITY OF CORPORATE ACCOUNTS; TRUSTS.

References: W. Z. Ripley, *Trusts, Pools and Corporations* (1905), ch. xiv, "The Security Holding Company" in *World's Work*, III (June, 1902), 1,927; E. S. Mead, *Corporation Finance* (1910), ch. xxix, 346–375, *Trust Finance* (1903), ch. iii, 25–46; J. H. Jenks, *Trust Problem* (1900); E. L. von Halle, *Trusts; or Industrial Combinations and Coalitions in the United States* (1895).

EDWARD S. MEAD.

HOLIDAYS, LEGAL. These are designated by statute and vary greatly in the different states. There are no annual legal national holidays, not even the Fourth of July, though Congress has several times declared special days to be holidays for that time. The President's proclamation of Thanksgiving Day makes it a legal holiday only in the District of Columbia. Mississippi is the only state that has no statutory holidays, though three are observed by common consent. The governor of a state is usually given power to designate certain days as holidays by proclamation. Statutes regulate to some extent also the proper observance of the holidays they designate, but not as strictly as Sunday (*see* SUNDAY LEGISLATION), and a holiday is not at common law like Sunday a *dies non juridicus*. Statutes usually provide merely for suspension of judicial proceedings, for presentation and protest of commercial paper on the next secular day, suspension of business in public offices, and for regulation of the sale of liquor. All business may be transacted on holidays except that expressly forbidden. **See** BUSINESS, GOVERNMENT RESTRICTION OF; LABOR, PROTECTION TO; SUNDAY LEGISLATION. **References:** *Am. and Eng. Encycl. of Law* (2d ed., 1904), 386; annual list of holidays in *World Almanac*.

S. McC. L.

HOLLAND PURCHASE. New York and Massachusetts claimed the land in what is now western New York. The dispute was amicably settled in 1786, New York receiving the jurisdiction and Massachusetts the preemption of a large part of the area in question. The latter disposed of her rights and eventually a large tract passed into the hands of a company formed in Holland which proceeded to survey and dispose of its holdings. **See** PUBLIC LANDS, STATE. **References:** J. H. Hotchkin, *Hist. of the Purchase and Settlement of Western New York* (1848); F. Bancroft, *William H. Seward* (1909), I.

P. J. T.

HOLST, HERMANN EDWARD VON. Hermann E. von Holst (1841–1904) was born at Fellin, Livonia, June 19, 1841. He studied at the universities of Dorpat and Heidelberg, and in 1867 came to the United States, where for several years he was engaged in journalism. He became professor of history at the new university at Strassburg in 1872, and at Freiburg in 1874, holding the latter professorship until 1892. During his professoriate he was, also, for ten years a member of the first chamber of the Baden Landtag, and for four years its vice-president. He was also tutor of the crown prince of Baden. He studied at London in 1876, and in 1878–79 again visited the United States. In 1892 he became professor of history in the University of Chicago, resigning in 1900. He died at Freiburg, January 20, 1904. His *Constitutional and Political History of the United States* (8 vols., 1877–92, rev. ed., 1899), covering the years 1787–1861, but dealing chiefly with the decade 1850–60, is a profound discussion, from the anti-slavery point of view, of slavery and state rights on their political and constitutional sides. He also wrote a life of Calhoun for the American Statesmen series (rev. ed., 1899), and *Constitutional Law of the United States* (1887). **See** POPULAR GOVERNMENT. **References:** A. B. Hart in *Nation*, LXXVIII (1904), 65–67; L. Hammond in *Review of Reviews*, XXIX, (1904), 321, 322.

W. MacD.

HOLY ALLIANCE. After the overthrow of Napoleon in 1815, the sovereigns of Russia, Austria and Prussia formed, at Paris, a league called the Holy Alliance whose ostensible purpose was subordination of politics to Christian principles, but whose real later purpose was to support European governments in suppressing revolutionary and reform agitations. In 1818, France became a party. England, although invited to join, declined.

In 1819, the United States received an unofficial invitation to join. No explicit refusal was ever given; but in 1820 the President, who approved the general principles, stated that his formal acceptance was not admissible under the organization of the government.

The attempt of the Alliance to extend its operations to America in 1823 was prevented by the Monroe Doctrine and the attitude of England. Its authority in Europe continuing to decline, especially after the Congress of Troppau in 1820, was finally terminated by the spirit of the age which it sought to control, and by the Greek revolution which did not fit in with the principles of the Alliance. **See** BALANCE OF POWER; CONCERT OF POWERS; GOOD OFFICES AND INTERNATIONAL CONGRESSES AND CONFERENCES; MEDIATION; INTERVENTION; MONROE DOCTRINE; NEUTRALITY, PRINCIPLES OF; STATES, EQUALITY OF; WAR, INTERNATIONAL RELATIONS IN. **References:** J. Q. Adams, *Memoirs* (1874), III, 506, IV, 394, 404; VI, 117, 185–186, 197, 207, 226; J. B. Moore, *Digest of Int. Law* (1906), VI, 374–379; *No. Am. Rev.*, XVII (1823), 340–375; C. A. Fyfe, *Hist. of Mod. Europe* (pop. ed., 1896), 408–10; E. Hertslet, *Map of Europe by Treaty* (1875).

J. M. CALLAHAN.

HOLY ROMAN EMPIRE. While the coronation of Charles the Great as Emperor of the Romans, which took place in 800 A. D., must in all strictness be assigned as the beginning of the Holy Roman Empire, the new life and vigor injected into it by Otto the Great, in 962, must be regarded as of even greater moment than the founding of it. The most important act of Otto's life was his assumption of the Lombard and imperial crown. His successors steadily followed his example, and the

sovereign crowned at Aix-la-Chapelle claimed, as his right, coronation by the pope in Rome. There developed the idea of a Holy Roman Empire, conceived as the continuation of the ancient empire, called "holy" because so intimately connected with the Roman church, whose protection constituted its chief task. It was called the "Holy Roman Empire of the German Nation" because the king of the Germans was chosen head of the empire, who bore his title through his imperial coronation but received his power by reason of his being king of the Germans. At the best, the Holy Roman Empire was an ideal rather than an accomplished fact. Composed of a loose aggregation of more than 300 petty states, divided by political and ecclesiastical lines and torn by internal faction, the empire was a hotbed of unrest. The power of the emperor was exceedingly small. Obedience on the part of the states could be secured ultimately only by making war on them. Unable to protect its own frontier or to ensure domestic peace, it crumbled on the abdication of Francis I, in 1806. **References:** T. T. Tout, *The Empire and the Papacy* (1903); J. Bryce, *Holy Roman Empire* (1905); S. Turner, *Germanic Constitutions* (1888). B. E. H.

HOME RULE FOR CITIES. See CHARTERS, MUNICIPAL; CITY AND THE STATE; COMMISSION SYSTEM OF CITY GOVERNMENT; MUNICIPAL GOVERNMENT.

HOMESTEAD EXEMPTIONS. It is customary to provide, either by statute or by constitution, that real estate of a certain amount occupied as a homestead shall be exempt from sale on execution or any other final process from any court. Generally such property is not, however, exempt from sale for taxes or public assessments, or for the payment of obligations contracted for the purchase of the premises. Provisions concerning the mortgaging of homesteads differ as do the provisions concerning the amount of property exempted. In Alabama, for example, "every homestead not exceeding eighty acres and the dwellings and appurtenances thereon" is exempt if the property is not in any city, town or village; or in lieu thereof any lot in any city, town or village with its dwellings and appurtenances owned and occupied by a citizen and not exceeding two thousand dollars in value is exempt. In Florida the limit is one hundred and sixty acres in the country or one-half an acre in a town or city. In Texas the limits are respectively two hundred acres and lots not over five thousand dollars in value. Some of the constitutions which do not make explicit reservation direct the legislature to do so. In Michigan a homestead of not over forty acres and the appurtenances selected by the owner are exempt, or, instead thereof, a lot or portion of a lot with the dwelling not exceeding in value fifteen hundred dollars; the exemption does not extend to a mortgage thereon, lawfully obtained. See TAXATION, EXEMPTIONS FROM; WAGE EARNERS MADE PREFERRED CREDITORS. **References:** S. D. Thompson, *Homestead and Exemption Laws* (1878); State constitutions in F. N. Thorpe, *Constitutions and Charters* (1909), *passim*. A. C. McL.

HOMESTEADS ON PUBLIC LANDS. The act of May 20, 1862, as amended, provides for free homesteads under certain conditions. Every person who is the head of a family, or is twenty-one years of age and a citizen of the United States, or who has filed his declaration of intention to become such, is entitled to enter one quarter-section of unappropriated public lands. Under certain conditions a married woman may take up a homestead, but no person owning more than 160 acres of land in the United States is eligible.

A patent issues on proof of residence and cultivation for three years. Six months is allowed for establishing residence. Residence means a continuous maintenance of a home on the land entered, while the improvement and cultivation must show the good faith of the entryman. A leave of absence of one year or less may be granted in certain cases. Veterans of the Civil and Spanish wars and the Philippine Insurrection may count their years of service toward the period of residence.

After fourteen months residence the entry may be commuted, in most cases, by the payment of $1.25 an acre, or $2.50 if within a railroad grant. The act of Feb. 19, 1909, provided for enlarged homesteads of 320 acres of non-irrigable land suitable for "dry farming," one-fourth of which must be cultivated within two years. The total homestead entries to June 30, 1912, were 127,846,424 acres.

See BOUNTIES TO SOLDIERS AND SAILORS; PATENTS TO LAND; PUBLIC LANDS, PREËMPTION OF; TREE CLAIMS.

References: Thomas Donaldson, *Public Domain* (1884), 332–356; Public Lands Commission, *Report*, 1905; General Land Office, *Suggestions to Homesteaders and Persons Desiring to Make Homestead Entries* (1910); T. B. Sanborn, "Some Political Aspects of Homestead Legislation" in *Am. Hist. Rev.*, October, 1900. PAYSON J. TREAT.

HONDURAS. Honduras, originally part of the captain-generalcy of Guatemala, later of the viceroyalty of New Spain, declared, with Central America (*see*), independence from Spain in 1821, and withdrew finally from that federation in 1838. The republic lies between latitude 13° 10′ and 16° north, and longitude 83° 20′ and 89° 30′ west (Greenwich), with an area of 46,250 square miles, and a population of about 745,000, slightly over 16 per square mile. The present constitution (1894) provides for a unicameral legislative system,

called chamber of deputies (*Camara de Diputados*), one deputy for each 10,000 inhabitants, elected by direct vote for a term of four years, renewed by halves every two years. Suffrage is compulsory for those who can read and write. A president and a vice-president are elected by direct vote for a term of four years. The cabinet consists of five ministers: of foreign relations, government and justice; of war; of finance and public credit; of promotion (*Fomento*); of public instruction. There is a national supreme court of five justices elected by popular vote for a period of four years; minor justices are appointed by the supreme court. There are seventeen departments and one territory. The territory of Mosquitia is on the east coast, and was the home of the Mosquito Indians. The Bay Islands north of Honduras belong to the republic. The capital is Tegucigalpa. State religion is Roman Catholic. References: J. I. Rodriguez, *Am. Constitutions* (1905), I, 359–390; Pan American Union, *Publications*. ALBERT HALE.

HONEST GRAFT. A phrase of recent origin signifying the activities of public officials in securing favors and sinecure offices for friends, in contradistinction to "graft" in the sense of illegal extortion of public funds. See GRAFT. O. C. H.

HONEST OLD ABE. A nickname of affection universally bestowed in the North upon Abraham Lincoln (*see*) because of his unimpeachable integrity. Often popularly contracted to Old Abe. O. C. H.

HOPKINS, STEPHEN. Stephen Hopkins (1707–1785) was born at Scituate, R. I., March 7, 1707. From 1732 to 1738 he was a member of the assembly, and from 1736 to 1739 a justice of the court of common pleas. In the latter year he was made chief justice. In 1741 he was speaker of the house, and from 1742 sat in the assembly from Providence, to which town he had removed. In 1751 he became chief justice of the superior court. He was a delegate to the Albany congress in 1754, and one of the committee which drafted the plan of colonial union. From 1756 to 1764 he was governor of Rhode Island, and was again elected in 1767. In the controversy with the mother country he was a staunch defender of colonial privileges, and in 1764 published a pamphlet, *The Rights of Colonies Examined*, which was reprinted in London in 1766. From 1772 to 1775, and 1777 to 1779, he was in the assembly, and from 1774 to 1776, and in 1778, a member of the Continental Congress. He signed the Declaration of Independence, and was a member of the committee which drafted the Articles of Confederation. While serving as a member of the assembly and of Congress, he continued to act as chief justice, being reappointed in 1773. He died at Providence, July 13, 1785. See DECLARATION OF INDEPENDENCE. Reference: W. E. Foster, *Stephen Hopkins* (1884). W. MACD.

HOSPITALS, PUBLIC. The Government does not maintain public hospitals in the ordinary sense—that is, there is no Government hospital corresponding to the public hospitals maintained by all municipalities. The government supports many hospitals for some of its officers and employees, such as the Army hospitals, the naval hospitals and marine hospitals. It also maintains hospitals for tuberculosis, leprosy, for the insane, for sick immigrants, and other special purposes. Thus the Government maintains 22 marine hospitals for sick and disabled seamen of the merchant marine at the various coast, lake and river ports. The Army and Navy each have numerous hospitals at all forts, garrisoned posts, navy yards, and other stations, the beneficiaries of which are the officers and enlisted men of these respective services. The Army Medical Corps also has general hospitals at Fort Bayard, New Mexico for the treatment of cases of pulmonary tuberculosis, and the Walter Reed General Hospital at Tacoma Park, Washington, D. C., and a General Hospital at San Francisco which acts as a base hospital for the Philippine Islands. There is a combined Army and Navy Hospital at Hot Springs, Arkansas, for the treatment of rheumatic cases and such other cases as are benefited by hydrotherapy.

The Department of the Interior has charge of the Government (St. Elizabeth's) Hospital for the insane situated at Anacostia, near Washington, D. C., accommodating about 3,000 patients. In addition to these, the Public Health Service maintains a tuberculosis sanatorium at Fort Stanton, New Mexico. The Army has a similar sanatorium at Fort Bayard, New Mexico, and cases of tuberculosis occurring in the naval service are admitted to the hospital at Las Animas, Colorado. These special public hospitals serve a particular purpose in helping to prevent the spread of tuberculosis. The Government also maintains a large hospital at Ellis Island for the care and treatment of arriving immigrants. This hospital is maintained for the comfort of immigrants too sick to proceed farther, or for the temporary care and detention of those who have diseases needing observation in order to determine whether they should be excluded under the immigration laws.

Admission to all the hospitals is limited by law and regulations to certain beneficiaries who are specifically described in detail in each instance.

See HEALTH, PUBLIC REGULATION OF.

M. J. ROSENAU.

HOTELS AND LODGING HOUSES, REGULATION OF. What constitutes a hotel varies in different states, and even for different pur-

poses in the same state. In New York, for example, a hotel for the purposes of the building law is one thing, for purposes of the liquor tax law another. Making allowance for local variations, a hotel may be said to be a building in which people are lodged for hire and provided with meals. It is differentiated from the boarding house only by its larger size. In some states a hotel is arbitrarily defined as a building in which there are more than fifteen sleeping rooms above the ground floor.

The efforts at regulation of hotels have concerned themselves chiefly with fire prevention, limitation of height, means of egress, and rights of travellers. In a few places where land values are high a slight effort has been made to control the amount of land that may be built upon by restrictions which have often been vague and inadequate. In general, little effort has been made to ensure the provision of proper light and air for such buildings.

The principal varieties of hotels and lodging houses recognized by the law are as follows:

(1) The apartment hotel is a combination of hotel and apartment house, in which families live in suites of from two to ten rooms as in apartment houses, but do no cooking. Transients are not received. Though such a building is essentially an apartment house and should be subject to the same regulation as to construction and use, it has been treated as an ordinary hotel.

(2) The "kitchenette apartment" is a recent variant of this type. It generally consists of suites of two or three rooms, a parlor and bedrooms and "kitchenette"—a small room about the size of a pantry in which light cooking is done for breakfast and lunch. This from the point of view of legal regulation is essentially an apartment house and so regulated in most cities.

(3) The "bachelor apartment" is similar to the kitchenette apartment, minus the kitchenette and limited to men's occupancy. It consists of suites of two, three, or even four rooms and bath, but no cooking is done anywhere on the premises. This type of house is treated as is any other hotel.

(4) An interesting illustration of how the effort to regulate may beget other evils is found in the so-called "Raines law hotel" in New York state. Here, in enacting a new excise law, in dealing with the restriction of the sale of liquor on Sundays, it was found expedient to exempt hotels from its operation. In defining hotels for the purposes of the act, the standard was set at a building having ten bedrooms and a common dining room. Immediately there sprang up thousands of saloons with these attachments calling themselves hotels, thus meeting the law's requirements and thereby securing the valuable privilege of Sunday opening. Having these bed-rooms, the necessity of letting them soon became apparent, and there developed the iniquitous "Raines law hotel"—a saloon combined with a house of assignation.

As marking the extremes to which efforts at regulation of hotels have gone in this country, may be cited the old Connecticut blue laws when the selectmen of the town determined who were fit to be "tavern-keepers," and the recent fantastic legislation regulating the length of bed sheets in buildings of this class.

See Building Laws; Fire Limits; Lodging Houses, Public; Model Dwellings; Municipal Housing. Lawrence Veiller.

HOUR RULE. The hour rule (Rule XIV, ¶ 2, adopted in 1841) is one of the rules of Congress governing debate. It provides that no member shall ocupy more than one hour in debate on any question. This rule is employed to give the control of a general debate on a measure to the member reporting the measure from committee. In practice he usually yields the floor for the greater portion of his time to other members for short speeches, retaining the power to move the previous question (*see*) at the close of his hour, and thus to expedite action on his measure. See Congress; Parliamentary Law; Rules of Congress; Rules of Legislative Bodies. A. N. H.

HOUSE OF COMMONS. As constituted since the extension of the franchise in 1884 and the Redistribution of Seats Act of 1885, the House of Commons consists of 670 members. Between the Union with Ireland in 1801 and the Reform Act of 1832 the number was 658, of whom 513 were from England and Wales, 45 from Scotland, and 101 from Ireland. In the Reform Act of 1832 the number was again fixed at 658—England and Wales, 500, Scotland 53 and Ireland 105. No change in numbers was made in 1867. At the last redistribution of seats in 1885, 103 small boroughs, which had survived the Reform Acts of 1832 and 1867, were thrown into the new county divisions of which many were created in the more populous counties, and with this change disappeared the old distinctions between knights of the shire and members from boroughs or cities, which dated back to the beginning of the representative system in 1295. The number of members was fixed by the Redistribution Act of 1885 at 670, the distribution being: England and Wales, 495; Scotland, 72; Ireland, 103. Included in these are nine members from the universities: two each from Oxford and Cambridge, two from Dublin, one from the University of London; and two from the Scotch universities—Glasgow and Aberdeen, and Edinburgh and St. Andrews. The University of London and the Scotch universities first came into the representative system in 1867.

There were eighty-five avenues to the parliamentary franchise during the last century of the unreformed House of Commons. There

was no uniformity in borough franchises. In some the right was in the freemen, in others in the burgage holders; in other potwallopers—all men who could prove that they were self-sustaining—could vote; but most of the qualifications were creations of the ingenuity of lawyers under the Forty-Shilling Freehold Act of 1430. Three reform acts have done much to simplify the franchise. In 1832 the county franchise was extended to copyholders and fifty-pound leaseholders; and the borough franchise to occupiers of houses of a rateable value of ten pounds a year. Practically all male householders in boroughs were enfranchised in 1867 and in 1884 a similar franchise was extended to householders in the counties. In boroughs the franchise is based on occupation and payment of rates. The mass of electors in county divisions vote as occupiers; but voters in respect of freehold land of a value of ten pounds a year need not be occupiers or even residents in a division, and it is under this franchise that tens of thousands of plural voters can come into a division at an election. On the registers in service at the general elections of 1910, there were 608,270 ownership voters and 48,134 university voters; but it has never been practicable to ascertain how many of these were plural voters. Instances are recorded of men voting in 17 or 18 different parliamentary divisions at one general election. University electors are men who have taken an M. A. degree. Their votes may be sent by mail. Service voters are men occupying rooms as part of their duty to their employers. Lodgers may claim a vote if they occupy rooms of a rental value of £10 a year—exclusive of service; but in 1910 there were only 281,258 lodger voters in the United Kingdom. Occupation of house or rooms must be for twelve calendar months before July 15 of each year, when the work of compiling the registers is begun preparatory to the public sessions of the revising barristers. The total number of electors in 1910 was 7,705,717; and at the general election in December—taken on a register nearly eighteen months old—the number of votes cast was 6,189, 369.

See CABINET GOVERNMENT; PARLIAMENT; PARTY GOVERNMENT IN GREAT BRITAIN.

References: N. R. Anson, *Law and Custom of the Constitution* (4th ed., 1909), ch. iv.; E. Porritt, *Unreformed House of Commons* (1903), I, ch. i-vi.; *Liberal Year Book*, 1911, "Electoral Statistics," 187–200; A. L. Lowell, *The Government of England* (1908), I, ch. ix.

EDWARD PORRITT.

HOUSE OF GOVERNORS. The House of Governors is an outgrowth of the Conference of Governors (*see*). At the meeting in Kentucky, in 1910, several governors suggested a permanent organization, which by the fall of 1911, became popularly known as the House of Governors. It is the hope of the governors to make it a sort of fourth department of the Federal Government, with financial support from the states. If these plans are carried out, it will be a great extension of state power over the "twilight zone" (*see*). At present, the chief value of such an organization is acquaintance and exchange of ideas; as a part of government machinery it is difficult to adjust.

See GOVERNOR; GOVERNORS, CONFERENCE OF; UNIFORM LEGISLATION.

References: Conference of Governors, *Annual Reports; Outlook*, XCIX (1911), *passim; Am. Year Book, 1910*, and year by year.

T. N. H.

HOUSE OF REPRESENTATIVES

Powers.—The House of Representatives, commonly known as "the House," represents population as the Senate represents the states. Its legislative powers are identical with those of the Senate; for the exclusive right of initiating revenue bills, secured to it by the Constitution (Art. I, Sec. vii, ¶ 1), is only maintained in the form of a fiction. In the Senate's executive powers with regard to treaties and appointments the House has no share. But when, as happened in 1801 and 1825, no candidate receives an absolute majority of the electoral vote, the important function of choosing the President then falls upon it, the Representatives voting by states. The House has the sole right of impeaching federal officials before the Senate.

Size.—The Constitution (Art. I, Sec. ii, ¶ 3) leaves Congress free to determine the size of the House except that there must not be more than one Representative for every thirty thousand persons or less than one member for each state. There has been a steady increase in numbers. In the First Congress there were 65 members; in the Sixty-Second (1911–1913), after the admission of Arizona and New Mexico, 395; and under the reapportionment act of 1911 the Sixty-Third has 435. But considerable as this growth has been, the growth of population has far exceeded it. While the ratio was 30,000 to each member in 1789, it is now 211,877. With the exception of Germany no country in Europe has a ratio one-third as large. Comparison with European countries, however, is unprofitable; first, because our state governments occupy so large a part of the field of legislation, and, secondly, because the House of Representatives, cut off from the executive, is not subject to the leadership and control of ministers, as are most

of the European chambers. There is grave danger that, being without such leadership, the House may become unwieldy. Already most of its serious work has been entrusted to committees; and the committees have grown portentously in size. Why, then, do the numbers keep increasing? Not because of any justification in reason or principle, but because those states whose population is stationary or almost so would, if the ratio were raised, lose some of their representation. Only once—in 1843—did Congress turn a deaf ear to their insistent pleadings.

Apportionment.—After each decennial census Congress determines the size of the new House and apportions the members among the states according to their population (*see* APPORTIONMENT). It is then left to the states to mark out the districts from which the members are to be chosen. If they fail to do so, the additional members are elected at large on a general ticket in case of an increased representation, or in case of a reduced representation the remaining members are so elected. Congress requires that the districts shall be "composed of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants." As is well known, these injunctions do not press hard on the consciences of state legislators. Not only are there often marked inequalities in population, but the gerrymander (*see*) has produced such extraordinary districts as the eighth of Alabama and the twenty-third of Illinois. The purpose of the gerrymander is to bring friendly voters into doubtful districts and to mass hostile voters in districts which under any circumstances are hopelessly lost. It does not accord well with the requirement for "compact territory."

Election.—The members of the House are elected for a period of two years, as compared with five years in England and Germany and four years in France. Such was the vogue of annual elections at the time of the Philadelphia convention that many regarded the two-year period as unduly long; to-day it is rather regarded as unduly short. Unless the President call a special session of Congress, the members do not take their seats until thirteen months after their election; and almost immediately their duties are interrupted by the necessity of looking to their districts for renomination. Four months before the expiration of their mandate the new elections are held. The people sit in judgment on the Representatives individually and even transfer their confidence to another party. Four months longer the old House sits, voting hundreds of millions of dollars and passing important laws, though it is partly composed of men who have been rejected at the polls and whose sense of responsibility may be dulled by the fact that they have nothing further to hope or fear from the voters. Perhaps the most damaging criticism of the short term is that a new man has to spend most of his time learning the mysterious ways of the House, mastering its complicated rules and precedents and making friends. In his first term he is bewildered and powerless; his influence as a law-maker is practically nothing. On the other hand a longer term might make the House less responsive to the popular will unless there were some provision for earlier dissolution, as in the European systems. Moreover, reëlection is becoming more common. Not long ago half the members could reckon confidently on losing their seats; in the Sixty-Second Congress 271 members had sat in previous Houses, their average of service being eight years. The constituencies, or at least the local party organizations, are beginning to see that rotation (*see*) does not pay; for the House yields influence, and places on the powerful committees, chiefly to those who have the crowning qualification of long service. It seems probable that long service will eventually be as much the rule in the House of Representatives as it has been in the British House of Commons.

Members are chosen in the even years, each second election thus coinciding with that of the President. According to the Constitution the time, place and manner of holding the elections may be prescribed by the state legislature subject to the superior power of Congress (*see* ELECTIONS, FEDERAL CONTROL OF). In the first half of the nineteenth century most states swept away all property and religious qualifications and estabilshed the manhood suffrage which, except in the South and to some extent in a few northern states, prevails to-day. In the South various means have been found to exclude most of the negroes from the polls. Women vote in ten western states.

Recently Congress has made some effort to safeguard the purity of elections. By the publicity act of 1911 candidates are required to file, before the primary or general election, statements of all promises made and expenses incurred; and they are not permitted to spend more than $5,000 or ten cents for each voter. A statute of 1910 requires all organizations which attempts to influence congressional elections in two or more states to file an itemized account of all contributions received or promised. The House is, under the Constitution (Art. I, Sec. V, ¶ 1), sole judge of the election of its members and it must exercise that power directly instead of committing it to the courts as has been done in England and Canada. Considering the prevalence of corruption, there are few contested elections. This seems due partly to the fact that they are decided as a rule on partisan lines, and partly to the fact that, since the House does not meet till a year after the election and since the inquiry would drag through most of the first session, the appellant stands to gain very

little. The House is also judge of the qualifications of its members. The Representative must be twenty-five years of age, seven years a citizen and when elected an inhabitant of the state in which his district lies; he must not be a federal office-holder. Only a simple majority vote is required in refusing admission to the House, but a two-thirds majority in expelling a member already seated. When a vacancy occurs through expulsion, resignation or other cause, the governor of the state concerned may call a special election or let the choice wait until the next regular election.

Members.—The Representatives, though viewed with less distrust than the members of state legislatures, are not usually held as high in public estimation as they deserve. They are suspected of having too little regard for the public interest, of using their position, if not for personal gain, at least for the advantage of political associates—for the payment of obligations to the local boss and his "machine." It is unhappily true that Representatives, if they look for reëlection or other political preferment, must act as the servants of the politicians who sent them to Washington rather than of the people. Most of them are closely identified with machine politics, three-quarters of them having held state offices. This political experience, which in another country would be regarded favorably, is here almost a reproach, since it implies familiarity with the underworld of machine activities. It is also curious that the public, though distrusting the motives which might lead their Representatives to act with independence and requiring them to keep their ears always to the ground, seem to look upon this servility with very little respect. Criticism of this kind, however, may easily be exaggerated. It is true that there are few great lights, that large, statesmanlike views are seldom heard; but, as Mr. Bryce says, the average business capacity is not lower than that of the House of Commons. The Representatives must be men of ability in certain directions, energetic, shrewd, or they could not have won success in the most exacting of professions. Some of their failings are due to the circumstances of their position—to the irresistible pressure brought to bear by the local party organization and to the conditions which prevail in the House itself.

Leadership.—The problem of organizing the House is not a simple one. There are over four hundred members, all desirous of making themselves heard and of getting consideration for their own measures. The amount of business before the House is vastly more than can be transacted. No ministers are present to direct the course of law-making. Yet direction there must be; and this has been developed, first, in control by the dominant party which decides upon its policy in caucus (*see*), and, secondly, in leadership within the party by a group of men who are coming to hold something like the authority of a cabinet. The majority or minority caucus is summoned whenever the attitude of the party upon an important issue has to be determined. The debate is secret; the vote is binding. It appears, however, that the influence of the caucus is declining and that the leaders summon it, in ordinary times, mainly to inform themselves accurately as to the currents of opinion among their followers. The hierarchy of leaders is composed of the Speaker and the chairmen of the more powerful committees.

The Speaker (*see*) is no longer a moderating official like his English prototype. He has long been the recognized leader of the majority, nominated in caucus, elected by partisan vote and invested with powers which are intended to give effect to the will of the majority. He must be a strong man, one whose long service and natural sagacity have enabled him to master thoroughly the intricate procedure of the House and the arts which are useful in the management of men. It is his business, of course, to settle questions of parliamentary procedure, subject to appeals from his decisions; and such points as are not distinctly covered by the rules he is apt to decide favorably to his own supporters. He may refuse to put dilatory motions. He may refuse or grant recognition to members wishing to speak. In various ways the rules (*see*) give him great power in shaping the direction of business. But very recently, in one of the periodic revolts against his preponderant authority, the House divested him of two important functions. In March, 1910, the committee on rules (*see*) was made elective and the Speaker declared ineligible for membership. This committee is very powerful. Subject to the approval of the House (that is, of the majority), it regulates the precedence of measures and controls the use of time. As the Speaker formerly appointed the committee and dominated it as chairman, his position has been sensibly weakened by the new arrangement. In March, 1911, a still more radical change was made when the appointment of the numerous standing committees, which had rested with the Speaker since 1790, was taken from his hands and entrusted nominally to the House, though really to the chairman of the committee on ways and means. These changes may not be permanent. At any rate somebody must lead; the business of Congress must be done. Whether in one individual or in another, responsibility will be concentrated, so that chaos may be averted, the party programme carried through and something achieved to hold before the people at election time. It has been urged in justification of the revolt that the Speaker was able to rob the members of his party of all independence and freedom of action, that he gave them the alternative of submission or impotence. But such complaints

are universal in the parliaments of to-day. In England a revolution has occurred since Bagehot wrote. Debates have lost much of their meaning, for the Cabinet rules the Commons, instead of the Commons ruling the Cabinet. The House of Representatives, always oppressed with arrears of work, can scarcely hope to recover the character of a deliberative assembly.

Committees.—In order to get this work done, the center of gravity has been shifted from the House to its committees (*see*). To them both deliberative and legislative functions have been surrendered. As a distinguished writer says, "Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work." There are now more than 50 of these committees, each entrusted with the oversight of a particular branch of legislation and each controlled by members of the dominant party. All bills which come before the House are sent to the appropriate committees, the two preliminary readings being granted as a matter of course and without debate. Ninety-five per cent of them are doomed. They are either reported back to the House adversely or neglected altogether. To the other bills varying degrees of consideration may be given. Really important measures are subjected to close scrutiny, information being collected from the executive departments, officials questioned and private individuals allowed to present their views. In some few cases hearings are held in different parts of the country and witnesses examined. The committees may amend as freely as they like. They can even originate entirely new measures by going through the form of having them introduced in the House and referred in the usual way. When completed, the bills are reported to the House, most of the committees being called by the Speaker in a fixed order; but a few privileged ones, such as those which deal with revenue and supply, being allowed to gain a hearing for their reports at any time. Except in the case of revenue and appropriation (*see*) bills the House ratifies without serious discussion; for time presses, and every member, since he sits on one or more committees and wishes to secure consideration for some measure which he has taken a hand in forming, thinks only of expediting the particular business in hand and clearing the way for his own.

This committee system has certain very obvious advantages. It is sanctioned by the experience of generations and by the necessity of saving the House from being overwhelmed by its manifold duties. No substitute has been offered. The fixing of responsibility on the chairmen provides the leaders who must be found in the place of the absent ministers. There is no doubt that a small group of men, familiar with a particular subject of legislation, are more competent to discuss it than a mob of four hundred and that, with their business-like exchange of opinions, they are more apt to reach a definite and consistent result. But there is also much to be said in the way of criticism. The unity of the House is impaired, also its sense of responsibility. Having entrusted so much of its authority to the committees, it is likely to shift on them whatever blame may attach to measures which it has accepted without proper examination. As the committees do so much of their work behind closed doors and are in any case too numerous to be kept under continuous public scrutiny, the nation does not attempt to watch them and takes little interest in their important activities. Thus the way is made easier for corruption. Powerful, numerically small and unwatched, the committees attract the lobbyist and from the nature of their position are subjected to severe temptations. This is all the more serious from the fact that all the members of the House receive committee assignments and the many weak men have as much power in their own field as the few strong men have in theirs.

The Legislative Process.—The character of legislation also suffers because the committees are not articulated, because they do not act in concert or seek to harmonize their measures. For instance, revenue bills are prepared by the committee on ways and means, appropriation bills by seven independent committees. In England a responsible minister submits a budget to the House of Commons, showing what the expenditure of the government will be for the next year and how he proposes to raise the necessary amounts; his aim is to establish a perfect equilibrium in the national finances. Under our arrangements there is no common policy followed in the raising and spending of money; in fact, revenue bills are commercial measures, framed not so much to supply the necessities of the Government as to subserve the interests of our domestic industries. It is true that the annual report of the Secretary of the Treasury—dealing with the collection and disbursement of the revenues, the operation of the fiscal laws, the condition of industries, etc., is sent to the committee on ways and means and that his annual "book of estimates" goes to the appropriating committees. but this does not integrate the different financial committees. They go their own way, as all other committees do.

The lack of harmony which is so noticeable in matters of finance does not show itself so often in other subjects of legislation because bills covering the same subject usually go to the same committee. But the process of lawmaking is faulty in other respects. There is, unfortunately, no restriction upon the number or character of the bills which a member may introduce. He may introduce bills which he does not intend to become law, but which may please friends or bring him political profit,

and other bills which appropriate money for his district and which he will use every effort to carry through the House. He does carry them through, by a practice known as "log-rolling." He combines with other members who want internal improvements for their districts, swapping votes, supporting them in return for their support. Log-rolling succeeds mainly because all members who wish to keep their constituencies in good humor have to practice it. The freedom of introducing bills, therefore, has the double disadvantage of overloading the House with work and wasting the public money. Moreover, a great part of the 30,000 bills presented to each House cover subjects of which the framer has no adequate knowledge and are wretchedly drafted (*see* LEGISLATIVE OUTPUT). The committees can be relied on to make improvements, but, being without the services of an official draftsman, they still leave the bills dangerously obscure and imperfect in form. Another defect of the system of legislation is that responsibility is sometimes hard to fix. A bill is hurried to its proper committee without discussion, the first two readings being practically dispensed with. It may never reappear. Or it may suddenly come before the House, much altered no doubt, and be swept through the third reading before the public have had word of it or the members have understood more than the preamble. The influences which were at work in the secret proceedings of the committee are unknown; the father of the bill, when he sees it emerge transformed, may disown it; and if the bill is of a non-partisan character, the leaders are saved from assuming any obligation and the vote of the House may cut across party lines. It seems that the responsibility should belong to the members of the committee which reported the bill; but the nation cannot visit its wrath upon them as upon the recognized head of a party; only their individual districts can discipline them. Since the committees make the laws and since there are more than 50 committees, legislation does not, in ordinary circumstances, attract public attention or enlighten public opinion.

Debate.—Some writers have urged that the committee system has killed debate in the House. The obvious reply would be that it has relieved the congestion of business and thus increased the time for discussion. This is seen in the case of revenue and supply bills which, in spite of the growing volume of business which the House transacts, continue to receive something like adequate attention. They are subjected to a searching examination in the committee of the whole house, first generally and then in five-minute speeches clause by clause and item by item. Everyone is interested in money bills, especially in appropriations for internal improvements. The House, usually so sparing of its time, suddenly becomes indulgent. Members have ample opportunity of making themselves heard and of learning the contents of these measures. That they do not have the same opportunity in the case of other bills is mainly due, not to the committee system, but to the lack of time; and it is the lack of time, not the mere insolence of the majority, which has restricted debate and made the House, outside of financial matters, little more than a ratifying assembly. Fortunately, members may solace themselves by securing leave to print in the *Congressional Record* (*see*) speeches which they might otherwise have delivered. The debating which does take place is not commonly of a high order. Sincerity is often wanting; and much time which might be devoted to the serious exposition of bills is wasted on minor details and quibbles over points of order. On formal occasions there is a good deal of immature declamation. The Representatives speak, indeed, under trying conditions. The hall is three times as large as that of the House of Commons, the members, sitting in concentric rows; and the noise of voices and footsteps sometimes makes it necessary for the members to crowd round a speaker in order to hear what he is saying. In 1911 the seats were brought somewhat closer together and in 1913 both the desks and swivel chairs were removed; but it is unlikely that there will be any recurrence to the brief experiment of 1858 when the parties were ranged opposite each other on benches. The serious examination of measures will continue to take place in committee-rooms.

The procedure of the House has taken shape under the imperious necessity of getting business done. Freedom of debate is severely restricted. No one except the mover or the reporting committeeman may speak more than once on the same question or for more than an hour unless with the unanimous consent of the House. Before going into committee of the whole, in which the quorum has been fixed at one hundred, the House may set a limit upon the length of the speeches and the time for debate. Resolutions offered by unanimous consent, bills let in under suspension of the rules by a two-thirds vote, and the reports of privileged committees frequently interrupt the regular course and thus further curb the freedom of debate. The privileged committees, allowed to report almost at any time, include those which deal with elections, revenue, supply, public lands, rules, the conference committees appointed by the Speaker in cases of disagreement with the Senate, and several others. Owing to the pressure under which the House works, the more important measures are often brought to immediate consideration by means of special orders recommended by the committee on rules; and that committee, which exercises a general supervision over the course of legislation, can always rely on the acceptance of its recommendations by the majority. Some of the rules have been framed with the idea

of checking obstruction, or filibustering (*see*), on the part of the minority. Filibustering takes the form of repeated motions for taking a recess, entering the yeas and nays (*see*) on the journal or determining the presence of the quorum required by the Constitution (an absolute majority of the members). The rule that business must intervene between such motions is satisfied by the making of a speech. Nor can the rules prevent one-fifth of the quorum from demanding the entry of the votes upon the journal (this may consume an hour or two), for that right is protected by the Constitution (Art. I, Sec. v, ¶ 3). It is provided, however, that the Speaker shall entertain no dilatory motions and that those members present but refusing to answer to their names shall be counted for the purpose of making a quorum. Closure (*see*), by moving the previous question, provides another remedy. This motion, whose acceptance requires only a simple majority vote, has the effect of closing all debate and bringing to immediate vote a motion or series of motions or even the whole bill up to its passage or rejection. All incidental questions of order arising after the previous question has been moved must be decided without debate; there may not be even a call of the House unless on actual count by the Speaker it appears that a quorum is not present; but the reporting committeeman is still permitted to wind up the discussion. Outside of the rules checks on obstruction are found in the fact that mere factious opposition will be censured in the constituencies as well as in the House and that success in the use of obstructive tactics is achieved only when a substantial part of the minority combine on some important issue.

Quality of Legislation.—Legislation is the business of the House, and by the quality of its legislation it must be judged. There is no question that, measured by the standards of the chief parliamentary bodies of Europe, the legislative output is mediocre and in relation to some matters dangerously defective. This result may be attributed in large degree to the separation of executive and legislature, which deprives the House of its natural leaders and leaves the law-makers without the aid of administrative experience. But signs of improvement are already to be observed, especially in the closer formal and informal relations established with the executive. Important bills are more often drafted by the Secretaries; the President has been empowered to make recommendations each year for the better ordering of the finances. It is possible that this development will end in the Secretaries being admitted to the House (though without votes); or that the House will finally evolve a definite group of leaders acknowledging a kind of corporate responsibility and having a substantial control over the independent House committees.

See COMMITTEE SYSTEM; CONGRESS; CONGRESSIONAL GOVERNMENT; EXECUTIVE AND CONGRESS; REPRESENTATIVES; RULES OF CONGRESS; SPEAKER.

References: C. A. Beard, *Am. Government and Politics* (1910), chs. xii and xiv; J. Bryce, *Am. Commonwealth* (4th ed., 1910), chs. xiii–xix; P. S. Reinsch, *American Legislatures and Legislative Methods* (1907), chs. i, ii; W. Wilson, *Congressional Government* (15th ed., 1900), chs. ii. iii. CHARLES A. BEARD.

HOUSES OF CORRECTION. The name house of correction is applied to prisons for misdemeanants sentenced for petty offenses, such as vagrancy, drunkenness and petty larceny. Prisons of this class are sometimes known as "workhouses," "bridewells," "county camps," etc.

Most large cities of the United States maintain prisons for persons violating city ordinances. In many cities, such prisoners are employed upon the streets under guard; in some simple employment is provided, such as brush making, broom making, brick making, etc.; in others farms are attached to the prisons and many of the prisoners are employed in farming and truck gardening.

Persons convicted of misdemeanors under state laws are generally confined in county jails in idleness, but in many counties of the South such prisoners are employed upon the public roads and are kept in camps. Massachusetts has for many years maintained a state farm for misdemeanant prisoners, which is admirably organized. In the state of New York there are six "county penitentiaries" for misdemeanant prisoners. Difficulty has been found in providing suitable employment for the prisoners in the "county penitentiaries." At the present time, the drift of public sentiment is strongly in favor of farms for prisoners.

See COUNTY JAILS; CRIMINOLOGY; DELINQUENTS, CORRECTION OF; PENALTIES FOR CRIME; PRISON DISCIPLINE.

References: Cleveland City Workhouse and City Farm, *Annual Reports;* C. R. Henderson, "Report on Jails, Workhouses, etc.," in Nat'l. Prison Assoc., *Annual Report*, 1907, 94–114; Minnesota State Board of Corrections and Charities, *Biennial Reports*, 1884–1898; Detroit House of Correction, *Annual Reports;* Chicago House of Correction, *Annual Reports;* Cincinnati House of Correction, *Annual Reports;* Z. R. Brockway, *Fifty Years of Prison Service* (1912); F. H. Wines, *Punishment and Reformation* (1910). HASTINGS H. HART.

HOUSES, PRIVATE, CONSTITUTIONAL PROTECTION OF. The ancient maxim of the common law that a man's house is his castle illustrates the regard which has always been maintained for the safety of the family home and the security of the family in such home against violence or intrusion. In this sense the house, that is the dwelling house or man-

sion house, includes the buildings appurtenant to its use as a residence. By the criminal law the breaking into, or setting fire to, or stealing property from, such house is more severely punished than similar unlawful acts committed with respect to a building which is not a dwelling. The right of security in the dwelling is also illustrated by the rules of the criminal law relating to the extent to which one may go in defending himself and members of his family and his property therein. Constitutional recognition of the privacy and security of the dwelling house is found in provisions that soldiers shall not be quartered in any house without the consent of the owner in time of peace and that the right of the people to be secure in their persons, houses, etc., against unlawful searches and seizures shall not be violated (U. S. Const., Am. III, IV). See DEPUTIES; WARRANTS. **References:** T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 229–231; E. McClain, *Constitutional Law* (2d. ed., 1910), 313–14. E. McC.

HOUSTON, SAMUEL. Samuel Houston (1793–1863), a native of Virginia, was identified during his public career with the two southwestern states of Tennessee and Texas. After varied experiences as soldier, Indian agent, lawyer, and district attorney, he served two terms (1823–27) as Representative of a Tennessee district in Congress, and in 1827 he was elected by the Jackson Democrats to the governorship. In 1829 he abruptly resigned this office and took up his residence with the Cherokee Indians, then settled in Arkansas. In 1832 he made his appearance in Texas, and with the movement during 1833–35 looking toward Texan independence he had not a little to do. In 1835 he was made commander-in-chief of the Texan army; in 1836 he won the decisive victory of San Jacinto; and October 22 of the same year he was inaugurated president of the newly established Texan republic. In this office he continued until 1844, and when, in 1845, Texas was admitted to the Union Houston was elected forthwith to the national Senate. During his thirteen years of membership in that body he devoted himself principally to the safeguarding of the interests of the Indians, although as a Union Democrat he participated prominently in the debates upon slavery and other public questions. In 1859 he was elected governor of Texas; but in March, 1861, by reason of his refusal to swear allegiance to the Confederacy, he was deposed from office. See DEMOCRATIC PARTY; SECESSION; TEXAS. **References:** H. Bruce, *Life of General Houston* (1891); A. M. Williams, *Sam Houston and the War of Independence in Texas* (1893); W. C. Crane, *Life and Select Literary Remains of Sam Houston* (1885). F. A. O.

HOWLAND ISLAND. An uninhabited islet of coral formation south-west of Hawaii and almost on the equator, discovered in 1842 and taken possession of by the United States in 1857. It has fresh water and some scanty vegetation but its former deposits of guano are now exhausted. It is near Baker's Island (*see*). **Reference:** J. B. Moore, *Digest of Int. Law*, I (1906), 574. G. H. B.

HUDSON'S BAY COMPANY. This fur-trading corporation was chartered by Charles II in 1670, with a monopoly of trade and commerce in the region whose waters flowed into Hudson Bay, and neighboring "lakes and seas into which they shall find entrance or passage out of territories . . . aforesaid." The charter was given as a reward for efforts to find "the Northwest passage to the Southern seas"—efforts which never were effectual. It had complete lordship, full power (legislative, executive and judicial) within the vague limits of its territories. It was empowered to create a navy and an army, and to make peace or war with any non-Christian people. The plantation was called Rupert's Land in honor of Prince Rupert whom the King appointed as the first governor. In 1749 an effort was made in Parliament, to take the charter from the company on the ground that it was forfeited "by non-user or abuser." After the treaty of 1763 many individual fur-traders encroached upon the territories of the company and finally combined, in 1783, into the Northwest Fur Company of Montreal which disputed and ignored the rights of the old company and by 1818 had about forty posts, almost double the number of factories of the Hudson Bay Company. In 1821 the two companies formed a coalition and soon obtained from Parliament, for a term of twenty years, exclusive privileges beyond the Hudson Bay drainage system to the Pacific. In 1838, these privileges were surrendered and renewed by the Hudson Bay Company alone for another term of twenty years expiring in 1858 just before the discovery of gold in British Columbia.

In 1869, liable to be dispossessed by force as a result of the confederation movement in Canada, the company transferred to the Dominion all its territorial rights, for which it received £300,000 and one-twentieth of all lands set out for settlement for fifty years.

It retained its posts and rights of trade and by its relations with the Indians long continued to exert a powerful influence for law and order in unsettled regions. In 1892 it had 200 central posts and unnumbered dependent ones. Its supreme control is vested in a governor, a deputy governor and five directors elected by the stock-holders in London who delegate their powers to an executive resident in Canada, formally called "Governor of Rupert's Land" but now simply chief commissioner, who is in absolute charge of all operations of the company.

See ALASKA; ALBERTA; BRITISH COLUMBIA;

CANADA, DOMINION OF; CANADIAN PROVINCES; COLONIAL CORPORATION; COLONIZATION BY GREAT BRITAIN IN AMERICA; MANITOBA; NORTHWESTERN BOUNDARY CONTROVERSY; OREGON.

References: George Bryce, *Hudson Bay Co.* (1900); Agnes Laut, *Conquest of the Great Northwest* (1909); *Harper's Mag.*, LXXXIV (1892), 373–394. J. M. CALLAHAN.

HUELSEMANN EPISODE. In 1850, the publication by the Senate, of instructions which authorized A. Dudley Mann's mission in 1849 to obtain information with a view to the recognition of Hungary, caused Austria to take official notice of the mission by a protest (September 30) to Clayton, through Huelsemann, Austrian chargé d'affaires, declaring the American Government had exposed Mann to danger of being treated as a spy.

On December 21,1850, Webster, in a lengthy note which was characterized as "hardly more than a stump speech under diplomatic disguise," urged that the President's communication to Congress with which Austria was seeking to interfere, was a domestic concern, not a subject of diplomatic correspondence.

Later, Huelsemann made other complaints to which Webster did not reply, and finally gave notice that his government could not allow him to continue an official intercourse with the principal promoters of the Kossuth episode; but after Webster's death in the following autumn he resumed his functions and continued them until June, 1863.

See AUSTRIA-HUNGARY, DIPLOMATIC RELATIONS WITH; DIPLOMACY AND DIPLOMATIC USAGE; UNITED STATES AS A WORLD POWER.

References: F. Bancroft, *W. H. Seward* (1900), I, ch. xvii; G. T. Curtis, *D. Webster* (1872), II, 533–37; J. B. Moore, *Digest of Int. Law* (1906), I, 218–35; H. von Holst, *Hist. of the U. S.* (1885), IV, 63–100; *Polit. Sci. Quart.*, X, (1895), 256–91.

J. M. CALLAHAN.

HUGHES, CHARLES EVANS. Charles E. Hughes (1862—), associate justice of the United States Supreme Court, was born at Glens Falls, N. Y., April 11, 1862. In 1884 he was admitted to the bar, and began practice in New York City, rising rapidly to prominence in his profession. From 1891 to 1893 he was professor of law at Cornell, and lecturer from 1893 to 1895; and from 1893 to 1900, lecturer at the New York law school. In 1905 he was counsel for the Stevens gas commission created by the New York assembly, and in 1905–06 counsel for the Armstrong insurance commission, in which latter capacity he won a national reputation. He was also, in 1906, special assistant to the United States Attorney General in the coal investigation. He declined a nomination for the New York mayoralty in 1905, but in 1907 was elected Republican governor of New York. In his efforts to secure honest and efficient administration he met concerted and persistent opposition both within and without his party. The substantial fruits of his administration were a public utilities act, acts against bucket-shops and race-track gambling, and a general toning up of the state executive service; but his efforts to remove from office the superintendent of insurance, Otto Kelsey, charged with maladministration, were unsuccessful, and his bill for direct primaries was defeated. April 25, 1910, he was appointed associate justice of the United States supreme court, resigned the governorship, and October 10 was sworn into office. See AMERICAN SYSTEM; EXECUTIVE AND EXECUTIVE POWER; EXECUTIVE AND EXECUTIVE REFORM; SUPREME COURT. **References:** B. J. Hendrick, "Governor Hughes" in *McClure's*, XXX (1908), 670–681; J. G. Schurman, "Public Career of Charles E. Hughes" in *Independent*, LXIII (1907), 1325–1534. W. MAC D.

HUNDRED. A subdivision of the county in England, of importance in the Saxon and early Norman periods. Hundreds were established in the colonies of Maryland and Delaware; and the name appears in the early records of Virginia and Maine. In Delaware the principal subdivisions of the counties are still called hundreds. See COUNTY-PRECINCT SYSTEM. **Reference:** G. E. Howard, *Local Constitutional Hist.*, I (1889). J. A. F.

HUNKERS. New York Democrats were so named by the opposing "barnburners" (*see*), possibly because they "hankered" for office. They were the conservatives, and supported James K. Polk for President in 1844. Polk tried to be neutral at first, but later gave the patronage to the "hunkers." In the convention of 1848, both factions sent delegates and the convention tried to compromise by giving each delegate half a vote, but each faction rejected the compromise. The "hunkers" promised to support the nominee, but the "barnburners" refused, took up the Wilmot Proviso (*see*), and helped to defeat Cass (*see*). See BARNBURNERS; DEMOCRATIC PARTY; FREE SOIL PARTY. **References:** G. P. Garrison, *Westward Extension* (1907), 271–275; J. A. Woodburn, *Pol. Parties and Party Problems* (1903), 69–72. T. N. H.

HURD, JOHN CODMAN. John C. Hurd (1816–1892) was born at Boston, November 11, 1816. His *Law of Freedom and Bondage in the United States* (2 vols., Boston, 1858–62), is a classified summary of American legislation, national, state, and local, and of judicial decisions, relating to negroes and slavery; and is the standard authority in its field. He also published *Topics of Jurisprudence Connected with Conditions of Freedom and Bondage* (1856); and a very erudite treatise on na-

tional government, *The Theory of our National Existence as shown by the Action of the Government of the United States since 1861* (1881). He died at Boston, June 25, 1892. See GOVERNMENT, THEORY OF; POLITICAL THEORIES OF AMERICAN PUBLICISTS, RECENT.

W. MACD.

HUSTINGS. A term applied to the temporary structure from which a Parliamentary candidate addressed the electors in Great Britain before the introduction of the ballot in 1872. Other public meetings for purpose of conference are sometimes called hustings. To go on the hustings is to take part in the campaign as a candidate. It was also used in the early history of Virginia to denote the municipal courts in cities of over 5,000 inhabitants.

O. C. H.

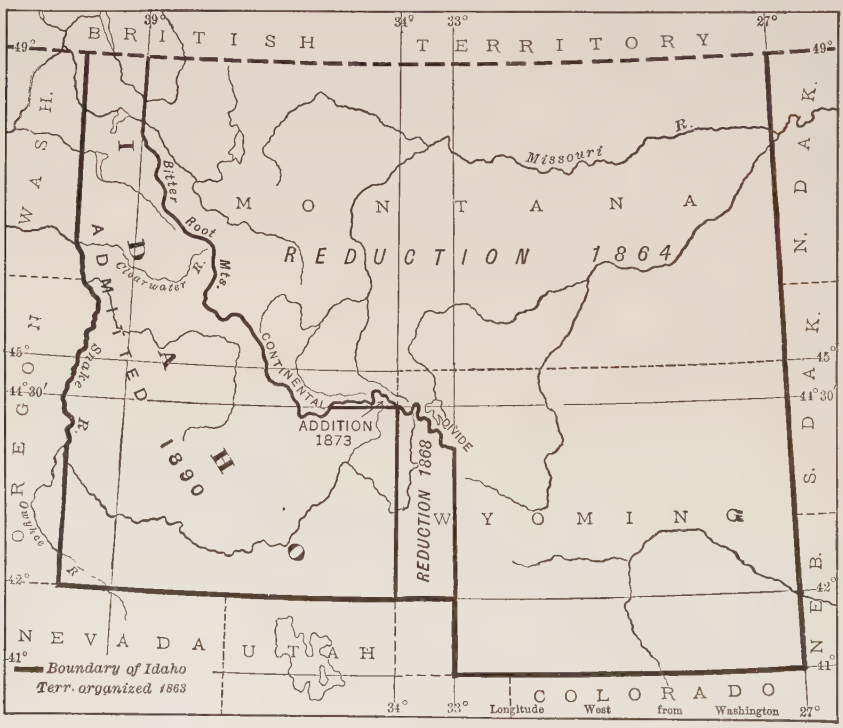
HUTCHINSON, THOMAS. He was born in Boston, Mass., September 9, 1711, and died in London, June 3, 1780. He was graduated from Harvard and became a merchant. In 1737 he was chosen one of the selectmen for Boston. The same year he was elected to the general court, and was reëlected the following year. Through his influence, as speaker of the house, it was voted to use the sum granted by Parliament to Massachusetts for the capture of Louisburg to cancel the paper money then in circulation. The colony was thus placed on a good financial basis, but Hutchinson was, in consequence, defeated for reëlection. In the Albany congress, he served with Franklin on the committee to draw up a plan of union. In 1758, he was made lieutenant-governor and three years later, chief justice of Massachusetts. He advised against the Stamp Act, but, in his attempts to enforce it, his house was sacked by a mob. In 1770 he was appointed governor. The publication of his letters to the private secretary of Lord Grenville were discovered and published. In these he criticised the acts of Samuel Adams and other leaders and declared that Massachusetts must submit to the abridgment of popular liberties. He advocated the supremacy of Parliament over the whole British Empire and was finally brought into such ill favor that he deemed it wise to sail for England, 1774, where he spent the remainder of his life. See MASSACHUSETTS; REVOLUTION, AMERICAN, SIGNIFICANCE OF. **References:** Thomas Hutchinson, *History of Massachusetts Bay from 1749 to 1774* (1828), III, 256, *et seq.;* P. O. Hutchinson, Ed., *Diary and Letters of His Excellency Thomas Hutchinson* (1886–1888); John Fiske, *Essays Historical and Literary* (1902), I, 1–53.

J. A. J.

I

IDAHO. The territory now embraced in the state of Idaho was first explored by white men when the expedition of Lewis and Clark crossed and recrossed it in 1805–06. There were early settlements by fur traders and missionaries (1810 and 1834). The discovery of gold in 1860 led to permanent settlement. A population of 14,999 in 1870 has increased to 325,594 in 1910.

The constitution fixes a form of state government in the usual American manner, with executive, legislative, and judicial departments. Executive officers comprise a governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction, each elected for two years. The governor is vested with the supreme executive power and "must



BOUNDARIES OF THE STATE OF IDAHO, SHOWING TERRITORIAL CHANGES

For government purposes Idaho was a part of Oregon Territory from 1848 to 1853. In the latter year the northern part was attached to Washington Territory, the southern part continuing in Oregon Territory. The admission of Oregon as a state in 1859 left the whole of Idaho as part of Washington Territory. In 1863 the Territory of Idaho was organized, including what is now part of Wyoming until 1868, and what is now Montana until 1864 (*see* BOUNDARIES, INTERIOR). Idaho was admitted to the Union on July 3, 1890, under a constitution adopted the preceding year.

see that the laws are faithfully executed." He has a suspensive veto on acts of the legislature, including items in appropriation bills. A two-thirds vote of the members present in each house is necessary to override a veto. The governor, secretary of state, and attorney general, constitute a board of pardons, a board of prison commissioners, and a board of examiners. These three officers, together with the superintendent of public instruction and the state auditor, constitute a board of land commissioners to administer public lands. The superintendent of public instruction, the secretary of state, and the attorney general, consti-

tute a board of education for the general supervision of public schools.

The legislature meets biennially, its members being elected for two years. The number of senators must never exceed twenty-four, and of representatives must never exceed sixty, each county always to have at least one representative. The compensation of each member of the legislature shall not exceed five dollars per day or three hundred dollars for any one session.

The judicial power of the state is vested in a court of impeachment—the senate—a supreme court, district courts, probate courts, and inferior courts. The supreme court consists of three justices, elected by the votes of the state at large for terms of six years. There are five district courts, the judges being chosen for terms of four years.

Both men and women are entitled to vote. The amendment giving the right of suffrage to women was adopted on November 3, 1896. Women may also hold office and perform jury duty.

County, municipal, township, and precinct organizations are provided by the constitution and laws. In the last twenty years the details of county and inferior local governments have been altered seven times by constitutional amendments. No county shall be formed which shall have an area of less than four hundred square miles or taxable property of less than one million dollars.

Public education is provided by a uniform and thorough system of free public common schools; by free public high schools; by a unified state university; and by public normal schools. The public school fund must remain inviolate, only the interest being expended for maintenance of schools.

The state administration was controlled by Republicans from 1890 to 1897. For the next five years Democrats, Populists, and Free Silver Republicans were in power. Since 1902 Republican state officers have been elected. In 1892, 1896, and 1900 the state gave its electoral votes to Democrats, or to Democrats and Populists in fusion. In 1904 and 1908 the Republican national ticket was successful. In 1912, the state went Democratic.

Recent and present day problems of government relate to such subjects as child labor (*see*); regulation of labor in mines, strikes and other labor troubles; employers' liability (*see*); control of liquor traffic by county option; primary election laws; conservation (*see*); and national forest policies. The problem of the Latter Day Saints is much less acute than formerly, now that this sect comprises only about one-tenth of the population.

References: H. H. Bancroft, *Washington, Idaho, and Montana* (1890), 333–588; W. B. Hepburn, *Idaho Laws and Decisions, Annotated and Digested* (1900); F. N. Thorpe, *Federal and State Constitutions* (1909), II, 904–954.

C. A. Duniway.

ILLINOIS

The Illinois Country, 1673–1784.—The first white occupants of Illinois were the French, who, after 1673, established a number of missions, trading posts and forts in the Illinois country. In 1717 the Illinois villages were attached to Louisiana; but in 1763 the Treaty of Paris transferred the sovereignty to the British who maintained their political control from 1765 until the outbreak of the American Revolution. In 1778, Kaskaskia and the adjacent villages were conquered by George Rogers Clark (*see*), acting for the state of Virginia; but the county government then instituted was soon allowed to lapse and in 1784 the Virginia title was transferred to the United States.

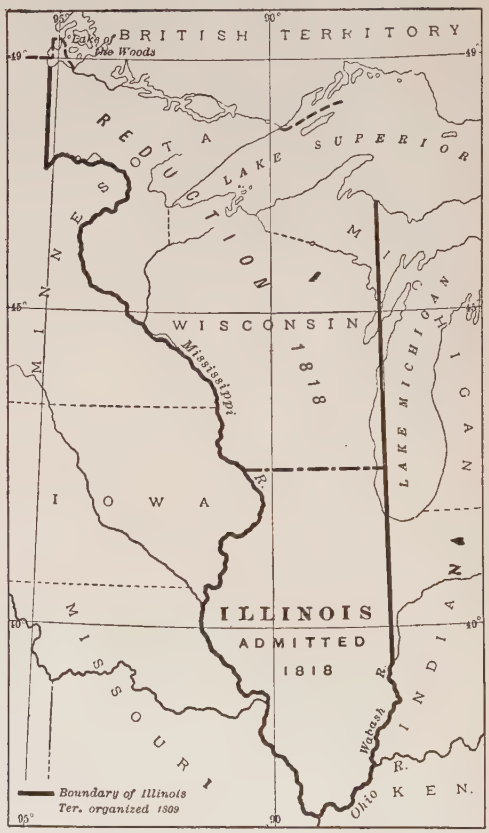
Territorial Administration, 1784–1818.—The Ordinance of 1787 (*see*) included Illinois in the "Territory Northwest of the River Ohio;" but in 1800 it was set off in the new territory of Indiana, and, in 1809, the Illinois Territory was organized for the whole region west of the Wabash River. In 1812 it was advanced to the second stage of territorial government with a legislature elective in both branches. The Anglo-American immigration was small until after the War of 1812. The restoration of peace with Great Britain and with the Indians (1814–1816) stimulated immigration and prepared the way for statehood. The enabling act was approved, April 18, 1818; the state constitution was adopted August 26; and on December 3, 1818, the state was admitted to the Union. The enabling act, disregarding the Northwest Ordinance line through the southerly bend of Lake Michigan, fixed the northern boundary at 42° 30′, thus securing for Illinois an adequate frontage on the lake. Another departure from the Ordinance of 1787 was the acceptance of a constitutional provision permitting the temporary and partial continuance of slavery.

First Constitution; Early Years of Statehood, 1818–1848. The constitution gave the suffrage to adult white males, provided for a governor and a lieutenant-governor, each elected for four years, and for the usual bicameral legislature. Except for the customary bill of rights, there were few limitations on the legislature, which had the right to appoint judges and a number of other officers. An ineffective veto was given to a council of revision consisting of the governor and the judges. During the next thirty years, Illinois passed grad-

ually out of the frontier stage. The Black Hawk War (1832) marked the end of the Indian problem. The Erie Canal and steam navigation on the great interior waterways stimulated immigration, not only as heretofore, from the southern and border states, but also from the northeast and from foreign countries, notably Germany and Ireland. Population increased from 55,211 in 1820 to 851,470 in 1850—an increase which was most strongly marked in the northern counties. During this formative period, an unsuccessful attempt was made to revise the constitution in the interest of slavery; and, in the face of great financial distress resulting from unwise banking and internal movement measures, the public credit was successfully defended against the advocates of repudiation. Nevertheless, the experience of the frontier period showed the need of constitutional revision; a new convention met in 1847, and the second state constitution was ratified by the people in 1848.

The Second Constitution; Development, 1848–1870.—The new constitution abolished slavery but kept the color line for citizenship and the suffrage. The council of revision was abolished and the governor was given an independent veto, subject, however, to reversal by majorities in both houses. Judges and other officers previously chosen by the legislature were hereafter to be chosen by the people, and the constitutional limitations on the legislature were considerably increased. Finally, the "Yankee" settlers of the northern counties secured a constitutional provision authorizing township organization. Illinois now entered upon a period of bitter sectional controversy reflecting, in the conflict between northern and southern elements within the state, the sectional politics which characterized the nation at large. In 1861, the state as a whole stood firmly for the Union; but, in 1862 and 1863, there was some wavering, with the tide running strongly against the anti-slavery policies of Lincoln's administration. At the close of the war, however, the dominant party in Illinois accepted fully the new doctrines of negro citizenship and suffrage; the "black code" was repealed and five years later the color line was eliminated from the constitution. In spite of the severe strain of the war, population increased with great rapidity. The census figure for 1850 doubled in 1860 and nearly tripled in 1870, while Chicago increased from less than thirty thousand in 1850 to nearly three hundred thousand in 1870. Agriculture was still the dominant interest, but manufactures were increasing rapidly, and in 1870 Illinois stood first among the states in railway mileage. New and complex problems of industrial organization again demanded constitutional revision, and the third state constitution was ratified by the people in 1870.

The Constitution of 1870.—The executive department now includes, besides the governor who is elected for four years, the lieutenant governor, secretary of state, treasurer, auditor, attorney general, and state superintendent of public instruction. The growth of population and industry has also made necessary the creation of a large number of officers and boards, usually appointed by the governor, with the consent of the senate, and responsible to him. Recent legislation, notably the Civil Service Act of 1911, has brought many of the minor appointments within the classified service with



BOUNDARIES OF THE STATE OF ILLINOIS, SHOWING TERRITORIAL CHANGES

competitive examinations under the directions of the Civil Service Commission. The governor's veto can now be overruled only by a two-thirds vote, and since 1884 has been applicable to single items in an appropriation bill. The members of the legislature are chosen in fifty-one senatorial districts, each electing one senator and three representatives, on a plan of cumulative voting which ordinarily secures to the minority party at least one member in each district and frequently prevents any real contest between the two leading parties (*see* MINORITY REPRESENTATION). Constitutional limitations on the legislature have been still further increased, notably by a sweeping prohibition of local and special leg-

islation on such subjects as elections, local government, and corporate charters; and the referendum principle has also been applied to certain kinds of legislation. Especially significant are the articles on "Corporations" and "Warehouses" which prepared the way for the comprehensive railroad and warehouse legislation of the seventies. Judicial jurisdiction above the county court is entrusted to circuit and appellate courts and to a supreme court now sitting at Springfield. Circuit and supreme court judges are elected by the people directly for terms of six and nine years, respectively, while the appellate judges are selected by the supreme court from the circuit bench.

Local Administration.—Notwithstanding the general constitutional regulations which aim at uniformity, Illinois has three different kinds of county government. Seventeen southern and central counties are governed on the old county commissioner plan, without township organization. All the other counties except Cook have the township system with county boards consisting of supervisors elected by the towns. In Cook County, the township organization has largely broken down and the governing board consists of fifteen elected commissioners. The county judge, clerk, sheriff, and coroner appear in all of these groups of counties. The town is still an important unit in most counties, furnishing through its annually elected collector and assessor the machinery for the collection of state and local taxes. In Cook County, however, the town has almost disappeared under the pressure of metropolitan conditions and even elsewhere in the state it is losing its relative importance through the marked development of urban population, requiring more highly organized municipal administration.

Municipal Administration.—Under the municipal code of 1872, small urban areas within townships may be organized as villages and governed by elective boards of trustees. Communities having at least one thousand inhabitants may become cities, choosing ordinarily a mayor and a board of aldermen, though a few cities have recently adopted the so-called "commission form of government" (*see*). Some concessions have been made to the metropolitan requirements of Chicago (*see*), especially since the adoption in 1904 of a constitutional amendment permitting a considerable range of special legislation for that city; but the mutual jealousies of metropolitan and "down state" elements have materially limited the scope and effectiveness of such legislation. Throughout the state, important municipal functions are withheld from city and village authorities and assigned to other administrative units, such as school, park, and drainage districts.

Public Education.—In public education, Illinois was comparatively backward, enacting its first comprehensive and effective school law in 1855 and its first constitutional article on the subject in 1870, but the law now recognizes the general principle of gratuitous, state-supported, and compulsory education. The system is administered, first, by elected boards in the various school districts. There are some variations, as in Chicago (*see*), where the school board is appointed by the mayor. The school township organization is still maintained for the administration of certain school funds. Certain supervisory functions are entrusted to elective county superintendents and the state superintendent of public instruction. There are five normal schools for the training of teachers, and in 1867 the legislature, having accepted the federal land grant of 1862 (*see* Morrill Grant), chartered the Illinois Industrial University, now the University of Illinois.

Revenue System.—State and local governments are supported chiefly by the "general property tax," assessed upon real and personal property at a supposed valuation of one-third of its "fair cash value." In Cook County and the counties not under township organization, the assessment of taxes is mainly a county affair; elsewhere it is entrusted to the town assessors. Assessments are subject to revision by a county board of review and the state board of equalization. Other sources of revenue for the state are the inheritance tax and a special tax on the Illinois Central Railroad; for municipal governments there are licenses and similar charges.

Political Parties and Issues.—Well-defined party organizations began in Illinois with the conflicts between Jacksonian Democrats and Whigs and until 1854 the Democrats were continuously in control of the state government. The repeal of the Kansas-Nebraska Bill, the consequent emphasis on the slavery issue, and increased immigration from the northeast brought radical changes in state politics, and in 1856 the new Republican party elected its candidate for governor, though the presidential vote was Democratic. During the succeeding period of sectional conflict and civil war (1857–1865), the state was closely contested by the Democratic and Republican parties led, respectively, by Stephen A. Douglas (*see*) and Abraham Lincoln (*see*). In the senatorial contest of 1858 and in the legislative and congressional elections of 1862, the Democrats were successful; but in the presidential and state elections of 1860 and 1864 the Republicans won decisive victories. Since 1864, Illinois has generally been Republican, though there have been some strong independent movements, notably the Liberal Republican (*see*) and Granger (*see*) movements of the seventies. In the past fifty-three years, except in 1892 and 1912, the Republicans have always won the electoral vote of the state. Democratic success in 1912 was largely due to

the formation of the new Progressive party. Party organization and procedure are now closely regulated by law and a comprehensive "direct primary" (*see*) law was enacted in 1910. The following political issues of recent years are especially significant: the "direct primary," "corrupt practices" (*see*) legislation, civil service reform, the initiative and referendum (*see* LEGISLATION, DIRECT), township and county option in the regulation of the liquor traffic, state control of public service corporations, and Chicago charter legislation. On all of these subjects the lines have been drawn, not so much between leading parties as such, as between opposing factions within the recognized parties. In 1913 the suffrage was partially extended to women.

Population.—The population of the state, 1860–1910, has been as follows: 1860, 1,711,951; 1870, 2,539,891; 1880, 3,077,871; 1890, 3,826,352; 1900, 4,821,550; 1910, 5,638,591. The last decade shows a marked reduction in the rate of increase and in fifty of the one hundred and two counties an actual decrease. Urban population has increased 30.4 per cent but the rural population remains about stationary. Of the total population in 1910, 43 per cent were persons of foreign birth or parentage.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: E. B. Greene, *The Government of Illinois; Its History and Administration* (1904); J. Moses, *Illinois, Historical and Statistical* (2d ed., 1895); Secretary of State, *Bluebook of the State of Illinois* (1911); *Revised Statutes of Illinois* (issued biennially by the Legal News Publishing Company, Chicago); Starr and Curtis, *Annotated Statutes of the State of Illinois* (1896); Illinois State Historical Library, *Collections* (1903 to date); "Population of Illinois" in *Thirteenth Census of the U. S., Abstract with Supplement for Illinois;* F. N. Thorpe, *Federal and State Constitutions* (1909), II, 955–1052; J. A. Fairlie, "County and Town Government in Illinois" in Amer. Acad. of Polit. and Soc. Sci., *Annals*, May, 1913.

EVARTS B. GREENE.

ILLITERACY. The term illiteracy is commonly understood to mean the inability of adults to read. In some countries the basis of calculation is the number of men and women married who cannot sign the register; in others the ability of army recruits to read; therefore no trustworthy comparison can be made between different countries on this question. In the United States a person is technically called illiterate if over ten years of age and unable to read and write.

According to the latest available statistics, illiteracy of adult males in Germany and in Sweden was as low as .11 per cent, and as high as 28.1 per cent in Hungary, and 61.7 per cent in Russia. In the United States the census of 1900 shows that 10.7 per cent of the total population over ten years of age were illiterate. This is 2.6 per cent improvement over the condition in 1890. Statistics for the whole United States are misleading, for the percentage of illiteracy in the South is greatly increased by the presence of the negroes and the lack of schools in the mountain regions; while the changing character of foreign immigration alters the situation greatly in such states as Pennsylvania.

Some striking peculiarities are to be noted as follows: of white persons born of native parents the percentage of illiteracy is 5.7 and of natives born of foreign parents only 1.6. This may be accounted for by noting that the immigrants in general settle in states and cities where there are well developed school systems and compulsory education, while the native whites in greater proportion live in rural surroundings, and include the inhabitants of the southern mountain region.

As indicating the effects of the educational systems of the different states it should be noted that of all white children of native born parents, from 10 to 14 years old, the illiteracy is only 2 per cent in Massachusetts, Connecticut, Minnesota, North Dakota, South Dakota, Nebraska, Utah and Washington; over 2 per cent and less than 1 per cent in all New England states except Maine, in Ohio, Indiana, Michigan, Wisconsin, Iowa, Kansas, and in all the states of the western division except Colorado, New Mexico, and Arizona. While at the other extreme for the same ages of whites is Virginia, 9.3 per cent, North Carolina, 16.7 per cent, South Carolina, 15 per cent, Tennessee, 11.9, per cent, Alabama, 15.7 per cent, Louisiana, 17.4 per cent.

Statistics of negro illiteracy show great progress; of children 10 to 14 years old, 20.1 per cent illiterate in 1910 as against 52 per cent for those from 35 to 44 years old.

See BENNETT SCHOOL LAW; EDUCATON AS A FUNCTION OF GOVERNMENT; EDUCATION, COMPULSORY; EDUCATIONAL STATISTICS; FOREIGN ELEMENTS IN THE UNITED STATES; SCHOOLS, PUBLIC, SYSTEM AND PROBLEMS.

References: *Scientific American*, XCV, Sept. 8, 1906, 174; *Outlook*, XCI, Jan. 16, 1909, 114; *Nelson's Encyclopedia* (1906), VI, 370; U. S. Bureau of the Census, *Twelfth Census* (1890); *Survey*, March, 1911, 987; *Littel's Living Age*, Sept. 30, 1911, 882.

GEORGE E. FELLOWS.

ILLUMINATI. A name given to certain religious societies claiming perfection or enlightenment in religious matters, applied especially to a body of mystics in southern France in the 18th century whose deistic and republican doctrines the American Federalist leaders, about 1798, claimed had been adopted by the "Democratic societies" in the United States.

O. C. H.

IMMIGRANTS, CONVICT. See CONVICT IMMIGRANTS.

IMMIGRANTS, HEAD TAX ON. Among the checks and limitations on immigration into the United States, has been a small head tax, the purpose of which is not very clear; for it has never been large enough either to sift immigration or to bring a desirable revenue to the United States. The first tax (50 cents) was laid August 3, 1882; by act of August 18, 1894, it was raised to $1.00, and by statute of March 3, 1903, to $2.00 from all immigrants except those from neighboring American countries including Cuba. By act of February 20, 1907, the rate was raised to $4.00 per head, and in the fiscal year, 1910–1911, it produced $3,669,816. The federal immigration commission in its report of December, 1910, thought the head tax ought to be raised considerably, and a bill to raise it to $5.00 was introduced in 1912. See IMMIGRATION; IMMIGRATION COMMISSION; POLL TAX.

References: U. S. Immigration Commission "Reports" in *Sen. Docs.*, 61 Cong., 3 Sess., No. 747, I, II, VII, VIII.

A. B. H.

IMMIGRATION

Statistical Survey.—About 29,000,000 immigrants have come to the United States since the Declaration of Independence. Most of these came during periods of prosperity. At the beginning of industrial depression immigration has always fallen off, sometimes by as much as two-thirds. With each era of returning prosperity, on the other hand, it has usually risen to a figure not reached before. The high water mark is that of 1907, when almost 1,300,000 immigrants entered the United States.

It is impossible to estimate with even approximate accuracy the increase of our population through immigration. It falls short of 20,000,000 by a considerable margin. Many of the immigrants have returned to their native lands after a short stay here. This has been true particularly during the last decades. That about two-fifths of the present-day immigrants eventually return, is the statement of the Immigration Commission in its recent report. Census statistics showing the increase of foreign-born population available since 1850 furnish some clue, but make no allowance for the immigrants who died during the decade. The following table gives by decades the number of immigrants; and the increase of foreign-born population as shown by successive censuses:

Year	Immigrants	Increase Foreign-Born Population
1776–1820	250,000 *	--------
1821–1830	143,439	--------
1831–1840	599,125	--------
1841–1850	1,713,251	--------
1851–1860	2,598,214	1,894,095
1861–1870	2,314,842	1,423,532
1871–1880	2,812,191	1,112,714
1881–1890	5,246,616	2,628,161
1891–1900	3,687,564	1,151,981
1901–1910	8,779,082	3,174,610
Total	29,022,880	

* Estimated.

Race Elements.—Until about 1885 the bulk of the immigrants were of Teutonic stock, of the English, German and Scandinavian races. The only important non-Teutonic elements were the Irish, and later the French-Canadian immigrants. The immigration of the last two decades, however, has been mainly from southern and eastern Europe. The Poles, and the various Slav races of Austria-Hungary, the south Italians, and the Russian Jews, have constituted most of the immigration of recent years.

The following table shows the total number of immigrants, in round numbers, from those countries which have been the chief sources of the stream of immigration. It brings out, also, how profoundly the predominant racial elements among the immigrants have changed.

Country	Immigrants 1820–1910	Per Cent of Total in 1882	Per Cent of Total in 1910
Great Britain	3,550,000	18.0	6.6
Ireland	4,200,000	9.7	2.9
Germany	5,350,000	38.7	3.0
Scandinavian Countries	1,800,000	16.3	4.6
Canada	1,200,000	11.1	5.5
Austria-Hungary	3,200,000	4.5	23.9
Italy	3,100,000	5.	20.7
Russia	2,400,000	3.3	13.9

Immigrants of the Present Day.—Aside from its racial composition, the immigration of recent years has presented other reasons for alarm. Almost all the recent immigrants are unskilled laborers, and few of them possess any considerable amount of property. With the passing of cheap agricultural lands, most of the recent immigrants, unlike those of the earlier decades, have been compelled to seek employment in mines and factories. The bulk of the recent immigration has gone to the great industrial states. Almost one-half of all immigrants in 1910, who had in mind any definite location, expected to make their home in New York or Pennsylvania. It is particularly in the large cities that the immigrants have congregated. In most of our cities of above 100,000 population there are as many persons of foreign as of native birth. Families

whose heads are of native parentage are rarely found in the slums of our large cities. Where the recent immigrants have gone into agriculture they have done well. Only a small fraction of the present-day immigrants, however, possess the means to become land-owners. As agricultural laborers there is demand for immigrants in some sections, but it is an open question whether the position of the immigrant as an agricultural laborer is better than as a factory-hand.

That criminal tendencies are characteristic of the immigrants of the present day, has often been asserted, but was conclusively disproved by the investigations conducted by the Immigration Commission. Comparison upon a fair statistical basis shows that the immigrants are not more given to the commission of crimes than are native Americans. Immigrants of the second generation commit more crimes than do the immigrants themselves, a fact which merely reflects the relation of slums to the problem of crime. Nor do the immigrants noticeably become public charges. Lack of willingness to work is not numbered among the faults of the present-day immigrant (*see* CRIME, PREVENTION OF).

On the other hand about one-third of the present-day immigrants are unable to read or write; among the south Italians the percentage of illiteracy is above 50. Again, very many immigrants come to the United States without any intention of staying here longer than a few years (*see* EMIGRATION), and many of those who plan to make the United States their permanent home have shown little disposition to become American citizens. Comparatively few of the immigrants from southern and eastern Europe who have been here longer than five years have as yet been naturalized.

As a result of the conditions prevailing in their native lands, most of the immigrants of the present-day have a standard of living very much below that of native American workmen and of the earlier immigrants. The situation is rendered worse by the great excess of males among the recent immigrants, for the immigrant competitor of the native laborer usually does not have to support a family. When he does have a family, he has generally been willing to call upon his wife to supplement the family income by her labor.

Causes of Immigration.—Much of the immigration of recent years has been due to the efforts made by steamship companies to promote it. Every district furnishing immigrants has been flooded by the agents of these companies. Labor-contractors of their own race in this country acting as middlemen have been another factor in inducing these immigrants to come. The fundamental reason for the coming of most recent immigrants, other than the Russian Jews, must, however, be sought in the economic oppression from which they have suffered in their native lands. The majority of the Slav and Italian immigrants were peasants or farm laborers in Europe. To these emigration to the United States has promised great improvement in their economic condition. Despite the low wages which these unskilled immigrants have been able to command in our industries, their earnings are several times that which they realized in Europe.

Effects of Immigrant Competition.—The effect of recent immigration on conditions in the United States is brought out in the recent volumes of the *Report* of the Immigration Commission. The result which stands out most clearly is that the immigrants of recent years have, to a very great extent, crowded out the native American and former immigrant workmen in the unskilled work in the basic industries of this country. Almost 60 per cent of the laborers employed in the iron and steel plants east of the Mississippi are foreign born. If these figures applied only to the unskilled workmen, the preponderance of the immigrants would appear even more glaringly. Similar situations prevail in the meat-packing, coal-mining, and textile industries. Railway and street construction work has been almost monopolized by the Italian and the Slav. In the sweatshops of the garment-making industry the native-born American is an exception.

This displacement in unskilled work of laborers with a high standard of living by those with a low standard is not altogether a result peculiar to the immigration of the last two decades. That it was to some extent characteristic also of the earlier immigration is brought out in clear relief in the history of garment-making. The first tailors in this country were native Americans and Englishmen; when the Irish and the Germans came in large numbers to the United States, they became the tailors. The Germans in their turn were mostly supplanted by the Russian Jews. Because of their greater willingness to call upon the help of their wives and children, the Italians, and to some extent the Poles, are now crowding the Russian Jews out of the sweatshops. Something of this same story can be told in the history of many other industries. That the competition of immigrants with lower standards of living was formerly not so keenly felt as now, was due to the rapid expansion of industries, and to the existence of cheap agricultural lands.

The fact that the immigrant has been a competitor of the American laborer has been the chief reason for the existence in this country of racial antagonism. Prejudice is always developed among laborers against those who are willing to work cheaper. The fact that usually the laborer who was willing to work more cheaply was an immigrant of another race has made it seem that such antagonism is racial, not economic. However, where the

competitor with the lower standard of living was of the same race equal enmity has been shown. Former immigrants and their children have often manifested quite as strong prejudice against the newer arrivals of their own race, as have Americans of native parentage.

The competition of immigrants with lower standards of living has led the native laborers to demand, through their trade unions, the enforcement of rigid apprenticeship rules, and the establishment of the closed shop. These devices protect the native laborers against the competition of the immigrants until these have been in this country for some time. In many industries in which unskilled work predominates, however, labor unions do not now exist. The I. W. W. (Industrial Workers of the World) attempted to organize this element, and had marked successes in 1912 and 1913.

Effect of Immigration on Wages.—Another result of the immigration of recent years, which stands out clearly in the report of the Immigration Commission, is the fact, that the rate of wages for unskilled labor has not advanced as rapidly as might be desired. The average annual earnings of all male adults, skilled and unskilled, employed in the iron and steel manufacturing plants east of the Mississippi are only $346, and the average family income is but $568. Only 40 per cent of the families whose heads find employment in this industry can subsist upon the earnings of one person alone. With the recent immigrants the conduct of boarding-houses has become the chief means by which those who have families supplement their scanty earnings. In other industries, as in the textile centers, the labor of the wives in the factories is necessary to make ends meet. A considerable number of the immigrants are forced to use every room as a sleeping-room. Yet the investigations made under the direction of the Immigration Commission show that the immigrants move to larger quarters, and give up carrying on boarding-house groups, as soon as they can do so.

Effect of Immigration on Distribution of Wealth.—Immigration has enabled American manufacturers to produce cheaply, through preventing the rate of wages for unskilled labor from advancing as rapidly as have prices generally. This has been one of the chief factors in making possible the rapid development of our industries. Yet it is an open question whether it would not have been better had the exploitation of our resources been less rapid. Rapid development has, to a great extent, been purchased at the sacrifice of an equitable distribution of wealth. Protection of the American laborer against the competition of the pauper labor of Europe, has been the watchword for much of the extreme tariff legislation; yet no real restriction has been placed upon the coming of the pauper laborer to the United States. The net effect of these policies has been that the greater share of the advantages from the rapid expansion of our industries has gone to the account of the profits of manufacturers, rather than to the wages of laborers.

Immigrant Colonies.—Of greater importance than any other problem created by immigration is that of the assimilation of the new arrivals with our older population, and it grows no easier. The immigrant of today is racially, temperamentally, and by training, out of touch with our previous population, and its institutions and ideals. For that reason the recent immigrants have herded together in communities of their own. There is scarcely a town of industrial importance east of the Mississippi and north of the Ohio and Potomac rivers, which has not its colony of Slavs, Italians, or other recent immigrants. Even those of the recent immigrants who have gone into agriculture have located in distinct colonies, within the area occupied by which very few persons of native birth live. Every immigrant community has its own business institutions, its own churches and parochial schools, its own beneficial organizations, and often its own newspaper printed in a foreign language.

Within these communities the leader whose advice is followed blindly is usually the man who conducts the immigrant bank. There the immigrants deposit their savings, or arrange for their transmission to their native lands. The immigrant banker also usually runs the labor agency through which the bulk of the immigrants find employment. Very often these men own, also, the stores, boarding-houses, and saloons which the immigrants patronize. In many cases these bankers and labor agents shamefully exploit the recent immigrants, yet the immigrants, in their ignorance of American language and customs, are absolutely under their control.

These immigrant colonies, to a very great extent prevent the original immigrants from getting into touch with American institutions, but the children are much less closely confined. They have the advantage of the education of the streets, and are reached by our public school system, thanks to compulsory attendance. The Immigration Commission has found that the children of recent immigrants are doing quite as well in our schools as do those of native parentage. Social settlements and institutional churches, also, do their best work with the immigrants of the second generation. The assimilation of the children of recent immigrants doubtless progresses rapidly. The investigations conducted by the Immigration Commission seem to show, that even physically the children of the recent immigrants differ from their parents, and tend to conform to a general American type.

Effect of Trades Unions on Immigrants.—Almost the only agency which works toward the

Americanization of the immigrants themselves is the trade union. There all races are brought together. Serious friction between them is largely eliminated. When the immigrant and the native laborer are in the same union their interests are identical: consequently racial antagonism disappears. Trade union membership also cultivates in the immigrants a spirit of resistance to oppression which was altogether foreign to them in Europe. American trade unions have usually insisted upon all their members becoming American citizens. Recent immigrants have made the best of unionists. In strikes, in late years, the Slavs have repeatedly displayed the spirit of "never say die," amid the greatest hardships. This demonstrated capacity of the Slav for unionism is one of the most hopeful signs of our ability to assimilate the immigration of recent years. Unfortunately most of it has gone into industries in which there are now no unions.

Restriction.—As early as the Passenger Cases (7 *How.* 283) in 1848 it was established that the Federal Government has exclusive jurisdiction over all matters relating to immigration. This power is a necessary consequence of the control of foreign relations and commerce by the National Government. The power of Congress to regulate immigration is unlimited: in the Chinese Exclusion Cases (130 *U. S.* 581, 149 *U. S.* 698) it was decided that any restriction deemed proper, even that of total exclusion, may be placed upon the admission of immigrants.

Not until 1882 did Congress enact any law restricting admission; and most of the restrictive state legislation adopted prior to that date had been pronounced invalid as an invasion of federal powers. The sum total of the action of Congress upon immigration prior to that date was represented by a statute of 1864, which created the office of Immigration Commissioner, with the duty of coöperating with the states in inducing immigrants to come, and in protecting them against frauds.

The law of 1882 was based upon the principle of excluding the least desirable immigrants. As such were designated escaped convicts, idiots, and persons likely to become public charges. The list of the classes of immigrants to whom admission is denied has since 1882 been very greatly extended, till in 1912 it covered in addition to the above: all those afflicted with a dangerous, contagious or loathsome disease; all those convicted of serious crime in their native lands; anarchists and the morally unsound; prostitutes, and those who engage in the "white slave" traffic; paupers and professional beggars. No serious opposition was ever offered to the exclusion of any of the above classes of undesirable immigrants.

Another series of provisions which exclude contract laborers and Chinese coolies, were adopted mainly because of the efforts of organized labor, and against the opposition of many organizations of manufacturers. The first Chinese Exclusion Act, which came into operation in 1882, barred all Chinese immigrants who could not prove that they were students, travellers, diplomats, professional men, or merchants. At the end of ten years this law was reënacted and there is no movement for its repeal (*see* CHINESE EXCLUSION).

The law excluding all immigrants who, prior to leaving their native lands have entered into contracts to work for persons in this country, was enacted in 1885. In 1903 it was extended so as to cover every form of implied contract.

Enforcement of Immigration Legislation.—Until 1891 the administration of the laws was left mainly to state officers. Since that date it has been the duty of federal immigration inspectors placed at all ports of entry, under the direction of the Commissioner General of Immigration, a subordinate of the Secretary of Labor.

The course of immigration can best be studied at New York, where three-fourths of all immigrants land. Cabin passengers are examined orally by immigration inspectors before vessels make a landing. All those who seem to fall within any of the excluded classes of immigrants are brought to Ellis Island, along with all those who travel in the steerage At Ellis Island inspection consists mainly of medical examination, and of oral quizzing to ascertain discrepancies in the statements made by immigrants and those appearing upon their manifests, which masters of vessels are required to prepare at the time of embarkation. All immigrants whose right to land seems doubtful are detained for further examination before a board of special inquiry, consisting of three inspectors: a vote of two of these entitles immigrants to admission. If the decision of the board of special inquiry is adverse to the immigrant he has an appeal to the commissioner of the port, and beyond him to the Commissioner General of Immigration, and finally to the Secretary of Labor. There is no right of appeal to the courts. Immigrants barred are returned to their native countries at the expense of the steamship companies who brought them, which also bear the cost of maintenance during their detention. For bringing over a person afflicted with disease capable of detection at the time of embarkation, the steamship companies are also subject to fine. Immigrants, who after landing become public charges because of reasons which existed at the time of their arrival, are subject to deportation within two years after their admission.

Effectiveness of Restrictions.—The system seems to have been gradually improving with the constant modification of laws necessitated by new methods of evasion. In recent years an increasing proportion of immigrants is deported till it reaches about 2 per cent of the

total immigrants. The investigations conducted by the Immigration Commission led it to the conclusion that laws barring the mentally defective and the diseased are not often evaded, though all other excluded classes considerably evade the law. Many Chinese coolies doubtless enter the United States, especially by way of Mexico and Canada. That the exclusion acts have not been a dead letter, however, is indubitably brought out in the decrease in the number of Chinese in this country since their enactment. The old forms of contract labor importation have been nearly broken up by the law directed against them. A large percentage of the recent immigrants from southern Europe, however, have fallen under the control of labor agents of their own race in this country, and thus are virtually in the same position as were the former contract laborers. Ex-convicts and persons likely to become public charges, constantly get by the immigration inspectors. Only through coöperation with European police officials can the exclusion of criminals be made reasonably certain. To keep out persons who become public charges a system is needed of following up immigrants after they have landed.

The theory upon which the laws are based is that steamship companies will do their utmost to prevent excluded immigrants from coming to the United States, but it has not worked out in practice. By a practice of forcing those whose admission seems doubtful to pay double passage, the law requiring steamship companies to bear the expenses connected with the detention and deportation of excluded immigrants has been robbed of its terrors. Much more effective has proven the system of fining the companies for every diseased immigrant they bring over. The extension of this principle to other classes of excluded immigrants, would force the steamship companies to introduce an efficient system of inspection before embarkation.

Proposed Restrictions.—Aside from the Chinese Exclusion Acts, the aim of all of our immigration legislation has been improvement rather than restriction. Determined efforts have, however, long been made to get Congress to adopt a policy of substantially reducing the number of immigrants. The Immigration Commission in its report of 1910 unanimously recomended that this policy be adopted. To supplement this policy of restricting immigration in such manner as to produce marked effect upon the supply of unskilled labor, the Immigration Commission recommended the policy of excluding those who are least likely to be readily assimilated.

These ends, a majority of the Commission held, could best be secured through requiring that all adult immigrants shall be able to read and write in some language. Such an educational test secured the approval of Congress in 1897, only to be defeated by the vote of President Cleveland. A similar provision was vetoed by President Taft, 1913. An educational test would be effective in reducing the number of immigrants for the immediate future, for about one-third of all the immigrants of recent years could not read or write. As to whether it would select the immigrants who make the most valuable addition to our population, is more open to debate: education is no warrant of character, and opponents of this test point out, that most illiterate immigrants are such through no fault of their own. A great merit of the educational test, on the other hand, is the comparative ease with which it can be administered. It is certain, also, that illiterates as a class correspond quite closely to the immigrants with the lowest standard of living.

Of other methods of bringing about restriction of immigration, the exclusion of all persons of poor physique which the Immigration Bureau has been urging, has found perhaps the greatest favor. The barring of all unskilled laborers unaccompanied by their families, has, also, many advocates. The increase of the head tax which immigrants must pay has often been urged in Congress. Its great defect is the ease with which it can be evaded in spirit, if not in letter.

See ALIENS, CONSTITUTIONAL STATUS OF; ANARCHISTS, EXCLUSION OF; CHINESE IMMIGRATION AND EXCLUSION; COMMERCE, INTERNATIONAL; CONTRACT LABOR LAW; CONVICT IMMIGRANTS; DEMOCRACY AND SOCIAL ETHICS; EMIGRATION FROM THE UNITED STATES; EXPATRIATION; EXPULSION FROM THE UNITED STATES; FOREIGN ELEMENTS IN THE UNITED STATES; IMMIGRANTS, HEAD TAX ON; IMMIGRATION COMMISSION; INTERNATIONAL LAW, PRIVATE; NATURAL RIGHTS; POPULATION OF THE UNITED STATES; PROTECTION TO AMERICAN CITIZENS ABROAD; QUARANTINE; SHIPPING, REGULATION OF.

References: F. A. Walker, *Discussions in Economics and Statistics* (1899), II, 417, 454; J. A. Riis, *How the Other Half Lives* (1892); "Work of the Immigration Commission" in *Survey*, XXV (1910), 571–604; G. W. Evans, *Alien Immigration* (1903); E. A. Steiner, *On the Trail of the Immigrant* (1906), *Immigrant Tide; Its Ebb and Flow* (1907); U. S. Industrial Commission, *Reports* (1901), XV, 1840, (1902), XIX, 957–1030; Senate Committee on Immigration in *Senate Reports*, 57 Cong., 2 Sess., No. 62 (1903); U. S. Immigration Commission, *Reports* (1909–1912); P. F. Hall, *Immigration* (1906); B. Brandenburg, *Imported Americans* (1903); A. B. Hart, *Southern South* (1910), ch. iv; R. M. Smith, *Emigration and Immigration* (1890); E. E. Proper, *Colonial Immigration Laws* (1900); J. R. Commons, *Races and Immigrants* (1905); Emily Balch, *Our Slavic Fellow Citizens* (1910); *Am. Year Book, 1910*, 397, 400, and year by year; Library of Congress, *List of Books with Reference to Periodicals on Immigration* (3d issue,

1907), *Select List of References on Chinese Immigration* (1904); A. B. Hart, *Manual* (1908), § 225. JOHN R. COMMONS.

IMMIGRATION, BUREAU OF. The Bureau of Immigration is one of the bureaus of the Department of Labor (*see* LABOR, DEPARTMENT OF) and is directed by the Commissioner General of Immigration. The duties of the bureau are to administer the alien immigration, contract labor, Chinese exclusion, and naturalization laws, and to aid in distributing immigrants according to the demand for immigrant labor. The work of the bureau is performed by two divisions under the Commissioner General, who takes immediate charge of the enforcement of the immigration laws, and the chief of the Division of Information. The most important immigration station is located at Ellis Island, New York, but stations are maintained at all the chief seaports, where the physical, mental, and moral defectives, as well as persons likely to become public charges or afflicted with contagious diseases, polygamists, anarchists, contract laborers, and Chinese are eliminated. The bureau also enforces the law concerning the deportation of aliens. The Division of Information aims especially to assist immigrants to settle on the land and is, in practice, of more assistance to farm laborers and domestics than to other classes of immigrants. For the year ending June 30, 1912, the bureau reported the admission of 1,017,155 immigrant aliens, and the departure of 615,292 emigrant aliens, while 16,057 aliens were debarred, and 2,456 were deported. **See** ALIEN; CITIZENSHIP IN THE UNITED STATES; DECLARATION OF INTENTION TO BE NATURALIZED; FOREIGN ELEMENTS IN UNITED STATES; IMMIGRATON. **References:** Dept. of Commerce and Labor, *Annual Reports;* Commissioner General of Immigration and Naturalization, *Annual Reports.* A. N. H.

IMMIGRATION COMMISSION. The Immigration Commission was established under a statute of Feb. 20, 1907, § 39. It was created to secure more accurate data than had been available, as to the cause, and, more especially as to the effects, of immigration. This work has been done thoroughly by special investigators and experts employed by the Commission. The investigations made in this country were concerned with above 3,000,000 persons, and much work was done abroad. The reports of the Commission were planned to cover forty volumes.

The keynote struck in the preliminary recommendations of the Commission made in December, 1910, was the necessity of reducing the number of immigrants, to prevent a further oversupply of unskilled labor. The immigrants to be excluded, the Commission recommended, ought to be those who are least likely to be readily assimilated. This policy, the Commission, with the exception of one member, believed could best be carried out through requiring that all immigrants admitted should be able to read and write in some language. The safe-guarding of immigrants against exploitation and their distribution where they are needed, were other problems the Commission considered of most vital importance. It recognized, however, that federal legislation can do but little toward their solution. Finally, the Commission recommended detailed changes in the administration of existing restrictions upon immigration, to render them more effective.

Based upon these recommendations, an elaborate statute passed both houses of Congress in 1913, but the measure was vetoed by President Taft.

See EXPULSION FROM UNITED STATES; IMMIGRANTS, HEAD TAX ON; IMMIGRATION; IMMIGRATION, BUREAU OF.

References: U. S. Immigration Commission, *Report* (1909–12); Symposium upon the Report of the Immigration Commission in *Survey*, XXV, 1911, 517–9, 524–31, 571–604.

JOHN R. COMMONS.

IMMUNITY. Exemption from serving in public office, or from performing other duties which citizens generally are required to perform. Thus, most public officers and members of some professions are exempt from jury service, that their duties may not be interfered with. In a less technical sense the term is applied to many of the political and civil guaranties in the United States and the various state constitutions. These are chiefly stated in the first ten amendments to the Constitution of the United States. **See** BILLS OF RIGHTS; CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO; PRIVILEGES AND IMMUNITIES. H. M. B.

IMMUNITY BATH. A term probably first used in 1906 applying to the sixteen individual defendants in the beef trust case discharged by Judge Humphreys of the United States District Court at Chicago, on the ground that they had secured personal immunity by furnishing the evidence upon which the indictments were based—hence the term, immunity bath, denotes immunity from prosecution secured through the giving of testimony, and has been applied especially to officers of corporations testifying before the Bureau of Corporations or before a federal grand jury. **See** EVIDENCE; LAW, CRIMINAL. O. C. H.

IMMUNITY FROM PROSECUTION. Exemption from prosecution for treason, crime or other offenses against the state, obtained by general amnesty acts, pardon or statutes of limitation. In effect it may also be obtained by confessing to complicity in a joint crime. **See** STATE'S EVIDENCE. H. M. B.

IMPEACHMENT

History.—Impeachment is the act of bringing formal charges or accusations against a public officer before a public tribunal qualified to pass upon the charges. The charges written out in detailed form are called articles of impeachment. Familiar in England for several centuries, impeachment as a form of trial was adopted by several colonies and, afterward, by seven states, so that the convention of 1787 created nothing new when it provided for impeachment in the Constitution (Art. II, Sec. iv). There have been nine impeachments in our national history.

I. On July 9, 1797, the Senate expelled William Blount of Tennessee, following a request from the House that he be "sequestered from his seat," pending impeachment charges. There was long discussion before the articles were prepared, the doubtful constitutionality of the impeachment of a member of Congress being urged. Finally, on December 24, 1798, five articles of impeachment were brought. These accused the former Senator of conspiracy to transfer New Orleans and adjacent territory from Spain to Great Britain, and of conspiracy to alienate the Creeks and Cherokees from friendly relations with Spain and the United States. In the mean time Blount had been elected to the legislature of Tennessee and had been made president of the senate. He did not appear for trial, but through his counsel declared that as a Senator he was not an "officer" liable to impeachment under the Constitution, and that, since his expulsion, he was no longer a Senator. The Senate sustained this plea of non-jurisdiction, and the case was dismissed.

II. On March 3, 1803, the House impeached John Pickering, United States district judge of the district of New Hampshire, on four counts. Three of these were concerned with alleged irregularities of judicial procedure in connection with the seizure of the ship *Eliza*. The fourth, which was the real charge, declared that Pickering was of loose morals and intemperate habits, that he had appeared upon the bench in a state of intoxication, and that he had invoked the name of the Supreme Being in a profane and indecent manner. Despite the plea of insanity made by his son, the Senate, by a party vote, convicted him on March 12, 1803, and he was removed from office, but was not disqualified from future office holding.

III. On November 30, 1804, Samuel Chase, associate justice of the United States Supreme Court, was impeached under eight articles. These covered arbitrary and unjust conduct in the treason trial of John Fries in April, 1800, and in the sedition trial of J. T. Callender in May 1800, improper urging of a grand jury in Delaware in June, 1800, and an inflammatory political harangue to a grand jury at Baltimore in May, 1803, with intent to excite the people of Maryland against their state government and against the United States. The last constituted the real offense in this political trial. On three articles he was found guilty by small majorities. On the other five he was found not guilty, but as a two-thirds vote was not given in any case, he was declared not guilty on all, March 1, 1805.

IV. December 13, 1830, James H. Peck, United States district judge for the district of Missouri, was impeached for imprisoning an attorney on April 21, 1826, and suspending him from practice for eighteen months, for reviewing in a newspaper article a published decision of the judge in a land case. He was acquitted by the Senate, the vote being 21 to 24.

V. At the outbreak of the Civil War, West H. Humphreys, United States district judge for the district of Tennessee, did not resign, but became an active Confederate. He was impeached on seven charges, covering open advocacy of secession, conspiracy with Confederate leaders, failure to hold federal courts, holding court as a Confederate judge in which capacity he sentenced men to be banished and imprisoned, ordered their property to be confiscated, especially the property of Andrew Johnson, and arresting and imprisoning William G. Brownlow. He was convicted on each charge except that part referring to Johnson, and by unanimous vote, June 26, 1862, was removed from office and disqualified.

VI. The most famous of all American impeachment cases is that of Andrew Johnson, President of the United States. It wa the outgrowth of the quarrel between President and Congress on reconstruction. The trial on eleven articles began on March 5, 1868. Eight of these related to the removal of Edwin M. Stanton, Secretary of War, and the appointment of Lorenzo Thomas in his place. The other three were connected with reflections by the President upon the acts, the personnel and the authority of Congress. On March 16, 1868, by agreement, a vote was taken on the eleventh article resulting 35 to 19 for conviction. March 26, votes were taken on the second and third charges with the same result. As there were not the necessary two-thirds in favor of conviction, the Senate adjourned *sine die*, and the Chief Justice, as presiding officer, directed a verdict of acquittal to be entered on the record.

VII. March 2, 1876, the House voted unanimously to impeach William W. Belknap, Secretary of War, for receiving nearly $25,000 for

the appointment and retention in office of the post-trader at Fort Sill, Indian Territory. A few hours before this action, the Secretary resigned and the President accepted his resignation. When, on April 4, 1876, five articles of impeachment were presented to the Senate, Belknap claimed that, as a private citizen of Iowa and no longer a civil officer of the United States, he could not be impeached. After nearly a month's debate, the Senate voted 37 to 29 that the impeachment might proceed. On August 1, 1876, he was declared guilty on three articles by 36 to 25 and on the other two by 35 to 25, but the vote for conviction not being two-thirds, a verdict of acquittal was entered.

VIII. Twelve articles of impeachment were brought against Charles Swayne, United States district judge for the northern district of Florida, January 24, 1905. Three charged him with taking excessive fees for service outside his district. Two related to the use of a private car furnished by the receiver of a railroad alleged to have been appointed by him. Two charged him with living outside his district, and the other five were concerned with improper fining and imprisoning of attorneys. On February 27, 1905, he was acquitted, being adjudged not guilty on each of the counts.

IX. On July 11, 1912, the House of Representatives, by a vote of 220 to 1, resolved on the impeachment, on thirteen charges, of Robert W. Archbald, appointed a United States district judge for the middle district of Pennsylvania, March 29, 1901, and elevated to the United States circuit court bench, January 31, 1911, when he was designated as one of the judges of the United States Commerce Court. The articles of impeachment were laid before the Senate July 15, and the trial was begun December 2. Five of the articles charged Judge Archbald with improper use of his influence to induce litigants in his court or before the Interstate Commerce Commission to enter into commercial agreements advantageous to himself or other parties; five alleged the acceptance by Judge Archbald of financial favors from litigants in his court, railroad officials, and attorneys practicing before him; of the remaining three articles, one referred to the appointment of the general counsel for a railroad company as jury commissioner for the middle district of Pennsylvania, another charged the private solicitation of additional arguments from an attorney practicing in the Commerce Court to sustain an opinion favorable to his client, and the third was a blanket indictment covering practically all the other charges. On January 13, 1913, by votes ranging from 68 to 5 to 42 to 20, the Senate found Judge Archbald guilty on five charges, the last two mentioned above and three of the articles charging the use of influence to obtain concessions from persons interested in suits in his court. He was removed from office by a unanimous vote, and, by a vote of 39 to 35, disqualified to hold any office of honor, trust or profit under the United States.

In general it is to be noted, that there were but three convictions out of the nine cases, and that, in a number of them, there was a marked political bias to the trials.

Constitutional Provisions.—The Constitution furnishes the foundation of the law of impeachment. It vests in the House the sole power of impeachment (Art. I, Sec. ii, ¶ 5). It gives the Senate the sole power to try impeachments (Art. I, Sec. iii, ¶¶ 6, 7), provides that Senators shall be on oath or affirmation when sitting for that purpose, declares that no one shall be convicted without the concurrence of two-thirds of those present. If the President is impeached, the Chief Justice of the Supreme Court is the presiding officer. The President, the Vice-President, and all civil officers of the United States may be impeached and removed from office on conviction of treason, bribery or other high crimes and misdemeanors. The President's power of pardon does not cover those convicted by impeachment (Art. II, Sec. ii, ¶1). Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law. The right of trial by jury for all crimes is expressly limited in cases of impeachment.

For its own government in cases of impeachment the Senate has adopted a set of rules. But interesting questions have arisen in connection with trial by impeachment, which have led to much discussion and wide divergence of view. What offences are impeachable? The Constitution does not give a clear decision. It mentions "treason, bribery, and other high crimes and misdemeanors" (Art. II, Sec. iv). It defines treason in specific terms, but it is silent on the others (Art. III, Sec. iii, ¶1). Bribery is well understood, but high crimes and misdemeanors are vague words. Two conflicting theories have developed, one, that impeachment covers only indictable offences, thus materially limiting its scope; the other, which seems to have the better support both in the argument and in illustrations from the nine federal cases, that officials are impeachable when no offence against positive law has been committed, the words "high crimes and misdemeanors" having purposely been left uncertain in their meaning. "A cause for removal from office," says Curtis, "may exist where no offence against positive law has been committed, as where the individual has, from immorality, or imbecility, or maladministration, become unfit to exercise the office."

Who may be impeached? The Constitution mentions "the President, the Vice-President

and all other civil officers." Are Senators and Representatives impeachable? In the Blount case the question seems to have been answered in the negative, although there is opposition to this theory. Closely connected with this is the question whether a person no longer in office can be impeached, and whether one who is charged may escape impeachment by resigning. It was not determined in the Blount case, but in the Belknap case the Senate decided by 37 to 29 that the impeachment should proceed despite the resignation of the accused, the ablest lawyers in the body favoring this view. The trial went forward, even though Belknap claimed that the failure of a two-thirds vote on the question showed lack of jurisdiction. That ex-officials are impeachable has been advocated strongly on several occasions, a statement of John Quincy Adams being quoted that such a person is "just as liable twenty years after his office has expired as while in office."

Must the crime be committed in discharge of official duty? The Senate did not decide this point in the Blount case, but eminent authorities contend that impeachment is not limited to official acts. In the cases of Humphreys and Swayne, charges were included covering matters not connected with official duties.

May the accused be arrested, sequestered or removed from office pending judgment on impeachment? Blount was arrested and put under heavy bond. This power appears unnecessary, since removal and disqualification are the only penalties, and since attendance of the accused at an impeachment trial is not required. Moreover Blount was expelled while awaiting trial. In the Constitutional Convention a motion providing for the temporary suspension of an officer under impeachment charges was lost. Johnson was not suspended during trial, although Senator Sumner contended that the Chief Justice was chosen to preside over the impeachment trial of the President, because the usual presiding officer, the Vice-President, was assumed to be performing the duties of the President for the time being. The commonly accepted notion, however, is that the Vice-President's personal interest in the decision makes him an undesirable chairman. The right to suspend is a doubtful one.

See JOHNSON, ANDREW; JUDICIARY; RECALL; RECONSTRUCTION; SENATE.

References: In general; J. Story, *Commentaries on Const. of U. S.* (1873), I, 494–497, 527–573; R. Foster, *Commentaries on Const. of U. S.* (1895), I, 505–632, (on Colonial and State Impeachments, 633–713); "Cases of Impeachment" in *Extracts, Journ. of U. S. Sen.* (1904); G. T. Curtis, *Const. Hist. of U. S.* (1889), I; *Documentary Hist. Const. of U. S.* (1894–1900), III; G. W. Van Nest, "Impeachable Offenses under the Constitution of the U. S." in *Am. Law Rev.*, XVI, Nov., 1882, 798–817; D. Y. Thomas, "Law of Impeachment" in *Am. Pol. Sci. Rev.*, II, May, 1908, 378–395; T. W. Dwight, "Trial by Impeachment" in *Am. Law Register*, VI (N. S.), Mar., 1867, 257–283; W. Lawrence, "Law of Impeachment" in *Am. Law Register*, VI (N. S.), Sep., 1867, 641–680; H. Taylor, "Am. Law of Impeachment" in *No. Am. Rev.*, CLXXX, Apr., 1905, 502–512; for the Blount trial, *Trial of William Blount* (1799); F. Wharton, *State Trials* (1849), 200–321; F. J. Turner, "Docs. on the Blount Conspiracy" in *Am. Hist. Rev.*, X (1905), 574–606; for the Pickering trial, "Cases of Impeachment of William Blount, John Pickering and Samuel Chase" in *Journ. of U. S. Sen.* (1805), 140; for the Chase trial, C. Evans, *Trial of Judge Chase* (1805); S. H. Smith and T. Lloyd, *Trial of Judge Chase* (1805); for the Peck trial, A. J. Stansbury, *Trial of Judge Peck* (1833); for the Humphreys trial, *Congressional Globe*, 37 Cong., 3 Sess., Pt. IV, 2942–2953; *House Reports*, 37 Cong., 2 Sess. (1862); for the Johnson trial, *Impeachment of President Johnson* (3 vols., pub. by Sen., 1868); D. M. DeWitt, *Impeachment and Trial of President Johnson* (1903); E. G. Ross, *Impeachment of Andrew Johnson* (1896); for the Belknap trial, *Impeachment of Secretary Belknap* (pub. by Sen., 1876); E. McPherson, *Handbook* (1876), 137, 156–170; for the Swayne trial, *Sen. Doc.*, 58 Cong., 3 Sess., No. 11 (1905); for the Archbald trial, *Am. Year Book, 1913; House Rep.*, 62 Cong., 2 Sess., 946; *Sen. Docs.*, 62 Cong., 3 Sess. 1140; Cong. Record, 62 Cong., 3 Sess., XLI.

FRANCIS W. SHEPARDSON.

IMPERIALISM. Imperialism is a word which has been used at different times to designate quite different political concepts. These various usages can be understood only as the result of the consideration of the history of European political development. Prior to the break up of the Holy Roman Empire in 1806, imperialism represented, primarily, the idea of bringing under one rule peoples of different races and tongues. The characteristics of the imperial state were great extent, great heterogeneity of population and, generally speaking, great absolutism. With the fall of this empire arose the great historical movement for the establishment of national states, the prime characteristics of which were: limited territory, homogeneity as regards race and tongue and, ultimately, increasing emphasis upon the idea of the consent of the governed. Imperialism, however, continued to live, both as a political conception and as a principle underlying the constitution of modern states. No longer did it carry with it, however, the idea of the world state such as found expression in the Roman Empire, the empire of Charlemagne and the Holy Roman Empire.

With the development of the policy on the part of European nations of acquiring outside

territories and governing them as colonies and dependencies, the word imperalism has taken on a new significance. In popular usage the term is now frequently employed to designate specially this policy of acquiring dependent territory and governing it without regard to the wishes of the people so brought under the control of another people and race.

As used in American politics, imperialism is employed to designate the policy upon which the United States has embarked of acquiring territory not a part of the United States proper, nor contiguous to it, which, on account of its climate, location, character of inhabitants, or other conditions, cannot, within any reasonable time be incorporated with the Union as constituent states of the nation. The term came into general use in this country immediately after the close of the war with Spain in 1898, which resulted in the acquisition by the United States of the Philippines, Porto Rico and certain other smaller islands.

The acquisition and subsequent retention of these territories, and particularly the Philippines, has been bitterly antagonized by a certain portion of the population of the United States on the ground both that doing so was unwise from a practical standpoint, and because it was claimed that such action represented a flagrant violation of the fundamental principles upon which our constitutional system rested. A republic, or at least one having the character and historical tradition of the United States, could not, it was held, consistently hold territory in a status of dependency, that doing so introduced in effect the imperialistic idea.

The more active of these persons effected an organization under the name of the "Anti-Imperalist League," with headquarters at Boston. This league has conducted a vigorous campaign, through the issue of publications and other means, for the propagation of its ideas and the adoption by the Government of its principles. This campaign was conducted with especial energy during the period immediately following the war with Spain, when the United States was engaged in active hostilities with the Filipinos for the supression of the rebellion led by Aguinaldo. There can be no doubt that the knowledge that there was strong opposition in the United States to the prosecution of this war and in advocacy of granting, in large part at least, the demands of Aguinaldo, lent encouragement to the enemy and was influential to some extent in prolonging the contest. There was, accordingly, strong feeling against the anti-imperalists, as they were called, this feeling going to the extent that their acts were, by some, claimed to be treasonable.

The questions involved were of such importance, that the matter of imperialism, by which the policy of the Republican administration was stigmatized, became a party issue, the Democratic party (*see*), under the leadership of Mr. Bryan, making opposition to it one of the chief planks in the Democratic platform. Imperialism also figured, though to a less extent, as one of the issues of the 1912 campaign. Notwithstanding the Republican victory, it is impossible to determine the extent to which the principles for which the anti-imperialists contend are in theory held by the people. Many persons, though holding to such principles, believe that since the nation has committed itself to the other policy there is no way, consistent with due regard to national prestige and fulfillment of obligations, by which a change can now be made.

With the acquisition of these dependencies an accomplished fact, the efforts of the anti-imperialists are now being directed mainly towards having the United States definitely announce its intention of granting independence to these territories, at the earliest practicable date, and of using all its efforts towards hastening the day when this can be accomplished.

See ANNEXATIONS TO THE U. S.; ANTI-IMPERIALISTS; PHILIPPINE ISLANDS.

References: Anti-Imperialist League, *Reports* (1899–1910); E. Atkinson, *The Anti-Imperialists* (1899–1910).

W. F. WILLOUGHBY.

IMPLIED POWERS. Although the Federal Government is one of enumerated powers (*see* CONSTRUCTION AND INTERPRETATION), nevertheless it must be presumed that the intention embodied in the Federal Constitution was to grant not only the express powers enumerated but the incidental powers reasonably necessary for their proper exercise. Indeed, there is, in a sense, an express grant of implied powers in the instrument itself, found in the provision that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution" (*see* NECESSARY AND PROPER) the powers expressly enumerated as delegated to it "and all other powers vested by this constitution in the government of the United States or in any department or officer thereof" (Art. I, Sec. viii, ¶ 18).

It is agreed on all hands that the Federal Government has, therefore, implied as well as expressed powers. The controversy in this respect has been as to the extent of the implication. (1) There must necessarily be implied power to do the things necessary and proper to be done in exercising the powers specifically granted. For instance, the power to collect taxes necessarily involves the fixing of schedules of duties to be paid on the subjects of taxation and provisions for officers to collect the taxes imposed and the enforcement of such provisions by fines and other penalties for their violation. (2) In a more general sense

powers of the Federal Government may be implied from the scope and purpose of the Constitution although not necessarily incidental to any specific enumerated power. If the end to be attained is legitimately within the scope of the Constitution, all means which are appropriate to the attainment of that end, unless specifically prohibited or inconsistent with the spirit of the Constitution, are within the grant of power. (3) Some of the powers expressly granted are of such character as to involve the exercise within a limited scope of the general powers of legislation. Thus the grant of exclusive power to legislate with reference to the District of Columbia (Art. I, Sec. viii, ¶ 17) necessarily implies the power to enact general laws on all subject matter of legislation within such district; and the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" (Art. IV, Sec. iii, ¶ 2) has been construed to authorize general legislation applicable within the territories and territorial possessions (*see* INSULAR CASES; TERRITORY, CONSTITUTIONAL QUESTIONS OF). (4) From the fact of national sovereignty necessarily implied in the creation of the Federal Government it has authority to exercise many powers not within the scope of state power although not even in general terms specifically granted. Any extended enumeration of the implied powers which have been exercised by the Federal Government without serious question would be impracticable, but they may all be explained as incidental to the powers expressly granted or the exercise of authority reasonably implied in the creation of a national government.

See CONSTRUCTION AND INTERPRETATION; EXPRESSED POWERS; MCCULLOCH *vs.* MARYLAND.

References: J. Story, *Commentaries on the Constitution* (5th ed., 1891), §§ 433–436; W. W. Willoughby, *Constitutional Law* (1910), 54–70; McCullough *vs.* Maryland, (1819) 4 *Wheat.* 316; Cohens *vs.* Virginia, (1821) 6 *Wheat.* 264; Legal Tender Case, (1884) 110 *U. S.* 421; Downes *vs.* Bidwell, (1901) 182 *U. S.* 244.

EMLIN MCCLAIN.

IMPOSTS. This is a generic term which may include any kind of tax. In the United States, however, it signifies an indirect tax. Although the term is found in the Articles of Confederation and in the Constitution, "taxes, duties, imposts, and excises" (Art. I. Sec. viii, ¶ 1), its exact significance is not of importance, inasmuch as duties apply to customs, and excises to internal revenue duties. Seligman, in a discussion of the etymological growth of terms involved in taxation, notes that among the latter stages of development is the sense of obligation as seen in the word duty; and of compulsion as seen in the word impost. The French, indeed, use the word *impôt* as the generic term for taxation. See TAXATION, CONSTITUTIONAL BASIS OF; TAXES, INDIRECT.

Reference: E. R. A. Seligman, *Essays in Taxation* (1897), 6.

D. R. D.

IMPRESSMENT. Impressment is, in general, the act of compelling persons to serve the state. It may be applied under differing conditions, but has most frequently been used to bring sailors into the naval service. Great Britain, particularly before the War of 1812 with the United States, under the doctrine of "indelible allegiance," claimed the right to search neutral vessels on the high seas for British subjects and to take such subjects and compel them to serve upon British ships of war.

President Madison, in a message of June 1, 1812, said: "British cruisers have been in the continued practice of violating the American flag on the great highway of nations, and of seizing and carrying off persons sailing under it, not in the exercise of a belligerent right founded on the law of nations against an enemy, but of a municipal prerogative over British subjects. British jurisdiction is thus extended to neutral vessels in a situation where no laws can operate but the law of nations, and the laws of the country to which the vessels belong." This, with other grievances, led to the declaration of war June 18, 1812. In speaking of the effect of failure to resist the pretensions of Great Britain, President Madison in a later message, November 4, 1812, says: "It would have acknowledged that on the element which forms three-fourths of the globe we inhabit, and where all independent nations have equal and common rights, the American people were not an independent people, but colonists and vassals. It was at this moment and with such an alternative that war was chosen."

This attack of the British ship of war *Leopard* on the American frigate *Chesapeake* in 1807 and the taking of four seamen from the *Chesapeake*, led to the disavowal on the part of the British ministry of "the pretension of a right to search ships of war in the national service of any state for deserters."

The claim of right to search neutral merchantmen was not renounced, however, even at the close of the War of 1812 though never exercised by Great Britain after that date. In 1850, by statute the British government acknowledged the right of a British subject to transfer his allegiance.

See ALIEN; ALLEGIANCE; EXPATRIATION; INDEFEASIBLE ALLEGIANCE; NEUTRALITY, PRINCIPLES OF.

References: J. D. Richardson, *Messages and Papers* (1896), I, 500–529; Henry Adams, *Hist. of the U. S.* (1891), II, 335 *et seq.*, IV, 39, 162; J. B. Moore, *Digest of Int. Law* (1906), II, 987–1001; bibliography in A. B. Hart, *Manual* (1908), § 177.

GEORGE G. WILSON.

INAUGURATION OF PRESIDENT. The Constitution of the United States provides that the President shall take the oath to preserve, protect and defend the Constitution (Art. II, Sec. i, ¶ 7). The Continental Congress, after many days of wrangling, on Sept. 13, 1788, selected the first Wednesday in March as the time, and the seat of Congress as the place for commencing proceedings under the Constitution. It did not convene at that time, because sufficient members had not assembled to form a quorum. Washington was inaugurated in New York April 30, 1789. Livingston, chancellor of New York, was selected to administer the oath to Washington. A reception was given the President in the Senate chamber, after which he was attended by the members of Congress to the balcony, where the oath was administered, followed by the inaugural address. Washington's second inauguration passed almost without ceremonies. The Cabinet discussed the question, and decided to have a public ceremony in the Senate chamber. At first a reply was made by Congress to the President's address, but it never had the significance of the reply to the King's address to Parliament. At the present time, the inauguration of President is a great civic festival. The oath is administered by the Chief Justice, on the east front of the Capitol. The time is still the fourth of March, although there has been much agitation for a change to a time when the weather would be better. See PRESIDENT. References: P. S. Reinsch, *Readings in Am. Federal Govt.* (1909), No. I; E. Stanwood, *Hist. of the Presidency* (1898), *passim;* R. B. Mosher, *Executive Register* (1903), *passim.* T. N. H.

INCOME TAX. See TAX, INCOME.

INCOME TAX, GRADUATED. See TAX, INCOME, GRADUATED.

INCORPORATION OF ASSOCIATIONS. In many states, in addition to the general provisions for corporations, there is a legal method by which associations intended for social and benevolent purposes may be formally registered and their members may be relieved from individual liability for the association's debts. The usual method is simply that a specified number of incorporators register their names and afterwards elect in addition members who can then elect officers. See CHURCH AND STATE. References: W. E. Baldwin, "Private Corporations" in *Two Centuries of Am. Law* (1902); Campbell *vs.* Floyd, 25 *Atl.* 1033, 1036, 153 *Pa.* 84 (1887–1896); *Am. and Eng. Encycl. of Law* (1909), I, 881. A. B. H.

INCORPORATION OF TERRITORY. In the annexations of territory to the United States, the question has repeatedly arisen whether by the instrument of cession (either treaty or joint resolution of Congress), the territory has assumed the complete status of territory previously within the United States. Louisiana was, by the treaty of 1803, expressly promised that the inhabitants "should be incorporated in the Union;" but the territory did not at once assume the same status as other parts of the Union not yet organized as states. The same principle applied to Florida; the annexed area did not automatically come under the existing general laws of Congress applying alike to states and territories. This principle was distinctly stated by the Supreme Court with regard to California, Fleming *vs.* Page, 9 *How.* 603; Cross *vs.* Harrison, 16 *How.* 164 (*see* CALIFORNIA AND NEW MEXICO, ANNEXATION OF), and it was tacitly admitted in Alaska (*see* ALASKA, ANNEXATION OF).

With regard to the Philippines and Porto Rico, the Supreme Court in the Insular Cases (*see*) of 1900 held that they were not "incorporated" by the treaty: they were no longer foreign territory, and were not yet an integral part of the territory of the United States; but remained in a kind of limbo outside general acts of Congress, and outside the constitutional guaranties to individuals, till Congress should take action. This decision reverses previous decisions of the Supreme Court to the effect that a general act of Congress applies to the District of Columbia and to organized territories, even though they are not specifically mentioned. See ANNEXATIONS TO THE UNITED STATES; DEPENDENCIES OF THE UNITED STATES; INSULAR CASES; TERRITORY, CONSTITUTIONAL QUESTIONS OF; TERRITORY, ACQUIRED, STATUS OF. References: C. E. Magoon, "Legal Status of the Territories and Inhabitants of the Islands Acquired by the U. S." in Bureau of Insular Affairs, *Report,* 1900, *Reports on the Law of Civil Government in Territory Subject to Military Occupation,* 1902, *Compilation of the Acts of Congress, Treaties and Proclamations Relating to Insular and Military Affairs, 1897–1903* (1904); C. F. Randolph, *Law and Policy of Annexation* (1901).

ALBERT BUSHNELL HART.

INCURABLES, PUBLIC CARE OF. There is practically no provision in the United States for the public care of incurables entirely at public expense outside of almshouses. In nearly every state some private institutions exist, often under church or religious auspices, that make provision for a few free patients and take incurables who can pay either a substantial entrance fee or weekly board ranging from eight to ten dollars a week and upwards. Latterly there has been considerable discussion and something accomplished in several localities in the direction of more adequate public provision for incurable consumptives where segregation is almost a necessity as a measure of public hygiene, and where poverty so often makes the condition of the sufferer additionally

pitiful and isolation in private homes practically impossible. See CHARITIES, PUBLIC AGENCIES FOR; POVERTY AND POOR RELIEF. References: A. D. Warner, *American Charities* (2d ed., 1908); Nat. Assoc. for the Study and Prevention of Tuberculosis, *Annual Reports* (1905 to date); Washington International Congress on Tuberculosis, *Proceedings*, 1908.

S. McC. L.

INDEFEASIBLE ALLEGIANCE. A doctrine of the English law, that a natural-born subject owes an allegiance which is intrinsic and perpetual, and which he cannot by any act of his throw off. The constitutions of many of the states of the Union contain provisions recognizing the right of expatriation, thus renouncing the English view, but our Federal Government continued to claim the right of such allegiance until about 1850. Reference: J. Kent, *Commentaries* (14th ed., 1896), II, 42, 43.

H. M. B.

INDENTURES AND INDENTED SERVANTS. This term is applied in English usage to certain contracts, including those between master and servant; the document was originally divided into two, by tearing, and the two parties proved their portions by bringing them in and showing that they fitted together. In the English colonies, the term was applied to white servants who agreed to serve for a term of years, in consideration of their passage over, or other advantages. Such a contract was enforceable by law which made the servant for the time being a bondman. Very often the indenture provided that at the end of the term of years the servant should receive a specified quantity of land or other property. On the other hand, a servant who misbehaved or ran away might thus prolong the term of his servitude. Many women as well as men went through this bondage. Large numbers of indented servants afterward founded families and took a high position in the colonies. See LABOR CONTRACTS; REDEMPTIONER. References: Diary of John Harrower in *Am. Hist. Rev.*, VI (1900), 67; K. J. Geiser "Redemptioners and Indented Servants in Pennsylvania" in *Yale Review*, X (1901–2); E. I. McCormac and J. C. Ballagh in Johns Hopkins University, *Studies* (1892), X, Nos. 6, 7, (1903), XXI, Nos. 3, 4; bibliography in A. B. Hart, *Manual* (1908), § 32, (lect. 15).

A. B. H.

INDEPENDENCE, DECLARATION OF. See DECLARATION OF INDEPENDENCE.

INDEPENDENCE LEAGUE. This organization was incorporated in New York under the direction of Mr. William Randolph Hearst, Dec. 9, 1905. The founder of the League had made a race for mayor of New York City in 1905 on an independent ticket put out by the Municipal Ownership League. This league had extended its organization and activities to other cities and states—Massachusetts, California, Illinois—and became influential in municipal politics in San Francisco, Boston and Chicago, where Hearst had strong metropolitan newspapers. As an outgrowth of the Independence League and its political activities, came the national Independence Political Party of 1908, sometimes called the "Hearst Party." This party met in national convention at Chicago, July 28, 1908, with forty-four states and two territories represented. It adopted a platform and nominated for President, Thomas L. Hisgen, of Massachusetts, and for Vice-President, John Temple Graves, of Georgia. Both men had been Democrats, as Mr. Hearst had been. These leaders were, as a matter of course, opposed to the Republican party. They denounced it as the party of privilege, monopoly, and corrupt commercial politics, controlling the government in the interest of "high finance" and "big business." They were now prepared to denounce, also, the Democratic organization as unworthy of confidence, the creature of unscrupulous bosses, an "ever-changing, wobbling, inconsistent, divided and disgraced party."

The party platform therefore declared for independence from the old parties: for direct nominations, direct legislation (*see* LEGISLATION, DIRECT), the referendum (*see*), and the recall (*see*), in order "to restore the power of government to the people;" for drastic corrupt practices acts; public ownership of the telegraph, immediately, and of "other public ultilities as rapidly as government shall show ability to conduct public utilities for public benefit;" an inherent right in the Government to issue money and a central Government bank to provide an emergency currency, which should be a legal tender for all debts; the eight-hour day; compulsory use of safety appliances on railways; an anti-blacklist law; postal savings banks and parcel post; good roads; penal anti-trust laws; popular election of Senators; abolition of child labor; prohibition of stock-watering and corporation frauds; and a revision of the tariff "not by the friends of the tariff but by the friends of the people," with "no protection for oppressive trusts." The party, appealing to the people on this platform, polled 83,562 votes for President in 1908. The Independence League continued its activity, especially in New York, in 1909 and 1910.

References: "Mr. Hearst's Party" in *Outlook*, LXXXIX (Aug. 8, 1908), 776; "Independence Party" in *Arena*, XL (Sept., 1908), 229–234; "Outlook for Third Parties" in *Nation*, LXXXVI (Feb. 27, 1908), 186; F. T. Graves, "Mission of Independence Party" in *Review of Reviews*, XXXVII (1908), 307.

J. A. W.

INDEPENDENT DEMOCRATS. A term applied to a body of Free Soilers (*see*), some of

whom had been Whigs but most of whom had been Democrats, who united in urging an independent movement against slavery extension in 1854. In January of that year there was published an "Appeal of the Independent Democrats in Congress to the People of the United States." It was signed by Salmon P. Chase, Charles Sumner, J. R. Giddings, Edward Wade, Gerrit Smith, and Alexander De Witt. It was a protest against the proposed repeal of the anti-slavery restriction of the Missouri Compromise by the Kansas-Nebraska bill (*see*). The appeal, which was written by Chase from a draft by Giddings, warned the people of the United States of the imminent danger that was menacing the freedom of the territories. It denounced the new Nebraska bill as a "gross violation of a sacred pledge, a criminal betrayal of precious rights, as part and parcel of an atrocious plot to exclude from a vast unoccupied region immigrants from the old world and free laborers from our own States and convert it into a dreary region of despotism, inhabited by masters and slaves." The Independent Democrats asserted that to repeal the Missouri restriction (*see* COMPROMISE OF 1820) and admit slavery to the vast Nebraska country, would be an act of Punic faith, and they declared that they would resist the Kansas-Nebraska Act "by speech and vote and with all the abilities which God has given us." This powerful manifesto, prompted by deep conviction and high purpose, met a vigorous response from the country. It helped to arouse an Anti-Nebraska sentiment within all parties and was one of the first steps in the formation of the present Republican party. See REPUBLICAN PARTY; SLAVERY CONTROVERSY. **References:** J. F. Rhodes, *Hist. of U. S.* (1893), I, 441; A. B. Hart and E. Channing, Eds., *Am. Hist. Leaflets*, No. 17 (1894–1901); J. A. Woodburn, *Political Parties and Party Problems* (1803); T. C. Smith, *Liberty and Free Soil Parties in the Northwest* (1897), *Parties and Slavery* (1906). J. A. W.

INDEPENDENT MOVEMENTS IN POLITICS.—Independent movements in politics include all those that lead away from unswerving adherence to the established parties. Very seldom do they capture the thoroughgoing party man who makes regularity (*see*) the chief article of his political creed. They make an especial appeal to and depend for support on the large numbers of citizens who, regarding party as an evil, are eager to join any movement that, for the time, promises relief from the dominance of the organization. But they arise often within the party from the natural variety and conflict of opinions and interests. The party view of a certain problem, which at the time is accepted as orthodox, does not satisfy the entire constituency. There are always those who believe that the organization ought to be used to give effect to different opinions or to uphold an opposing interest. This principle is always working in the party system. Men possessing qualities of leadership reach definite conclusions on a given policy, and uniting with others of like mind they seek to convince the larger public. The direct way to secure a reform is to gain the coöperation of the party in power. If they fail in this, reformers may either organize a third party (*see*) to champion their view or form an independent non-partisan organization.

The former method is illustrated by the party developments during the forties. In 1840 both Democrats and Whigs ignored the question of slavery in official party utterances, because in the membership of each party contradictory views were held. Extremists on each side tried to force their views upon their regular party organization with various results. The Wilmot Proviso (*see*), introduced in Congress in 1846, by a Pennsylvania Democrat, expressed the anti-slavery sentiment of a large number of northern Democrats who finally left the party to become Free-Soilers and to nominate Van Buren in 1848. A corresponding anti-slavery movement was progressing among the Whigs. Failing to capture the organization this faction separated from the party and became an independent party opposed to the extension of slavery, and finally united with the Free-Soilers to form the Republican party (*see*). Reform of the civil service has followed the other course. It has always been independent of party and has appealed to all parties for support.

Another type of political reform movement has developed in cities and states where the regular organization has become a machine (*see*). The machine is not, like the normal party, an organ for expressing public opinion, but is a means of controlling the government regardless of public opinion. Two methods of opposition to its influence have developed. Either good citizens within the party organize to restore the party to its proper function; or regardless of party they organize independently to gain control of the government. An instance of the former method is the case of Abram Hewitt and others who for a time displaced Tammany (*see*) rule in New York and secured official party recognition of an Anti-Tammany organization (*see* COUNTY DEMOCRACY). An instance of the second method is the election of Seth Low as mayor of New York on a citizens' ticket in 1901. The Mugwump movement, that of the "organized Independents," represents a similar revolt of Republicans in New York state and elsewhere. Many movements of this sort appear in every machine-ridden city or state.

Reform movements, such as the last named above, encounter peculiar difficulties. In a time of excitement they may carry an election, but to hold the position permanently against

experienced machine politicians they seem forced to create an organization equally thorough and efficient. This also is liable to corruption; it is certain to be accounted corrupt. No city or state has been gained and long held on the simple issue that one organization is better than another. County Democracy displaced Tammany for one or two years only. Seth Low was followed by a Tammany mayor. How far they should depend on thorough organization in preference to the simple open appeal to the voters is always a question with reformers. Each method has its advocates and exemplars. Governor Hughes followed the policy of ignoring organization and effected reform by the open appeal. President Roosevelt for years remained with the organization and made large use of its methods, while appealing for support to independent voters until he withdrew from the Republican Party after his defeat in the national convention of 1912 and formed the national Progressive party (*see*). As to how much or what sort of organization the reformer should adopt depends upon personality and the nature of the business in hand. Even temporary victory over the machine is of great advantage; no monarchy likes rebellion. Tammany is much weaker in its grip on the city than is the corresponding Republican machine of Philadelphia which has incurred fewer defeats.

The independent movement or uprising is only one among many means for restoring to the people the control of the government; but as a demonstration of a desire for reform it is a necessary agency. Whether the effort appears at the time to succeed or fail is a minor consideration. The machine-made type of independent movement is not found in states where the party system is normal. Each of the parties there furnishes an open forum for the discussion of disputed policies. The two parties compete for the honor and the profit of giving effect to a popular policy; or the parties represent opposing sides of the more permanent lines of disputed policy. In such a state independent action takes the form of a non-partisan propaganda, or the promoters organize a third party. In a normal party a large field for independent action is secured within regular party ranks. The machine, on the other hand, lays emphasis on orthodoxy and tends to destroy the liberty of dissent.

See COUNTY DEMOCRACY; MACHINE, POLITICAL; MUNICIPAL VOTERS LEAGUE; NON-PARTISAN POLITICAL ORGANIZATIONS; PARTIES, STATE AND LOCAL; REFORM MOVEMENTS, POLITICAL; THIRD PARTIES; VOTING, INDEPENDENT.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 47, 48; J. A. Woodburn, *Pol. Parties and Party Problems* (1909), ch. vii; M. Ostrogorski, *Democracy and Party System* (1910), ch. xiv; R. M. La Follette, "Autobiography" in *The American Magazine*, LXII (1911–12).

JESSE MACY.

INDEPENDENT NATIONAL PARTY. See GREENBACK PARTY.

INDEPENDENT PARTY. See INDEPENDENCE LEAGUE.

INDEPENDENT TREASURY. Independent treasury is the name applied to the system of keeping the funds of the Federal Government in the custody of federal officials. Legislation was first enacted in 1840, repealed in 1841; reënacted in 1846 and since that time, with amendments. See SUB-TREASURY.

D. R. D.

INDEPENDENT VOTING. See VOTING, INDEPENDENT.

INDESTRUCTIBLE UNION OF INDESTRUCTIBLE STATES. This was an expression used by Chief Justice Chase in rendering the decision of the Supreme Court of the United States in the case of Texas *vs.* White *et al* (7 *Wall.* 700). The case involved the right of secession and the question as to whether Texas was ever out of the Union. The court declared that the Union never was a purely artifical one, that in the Articles of Confederation it was declared to be "perpetual," and that the Constitution was ordained "to form a more perfect union," and that the preservation of the states was within the design and care of the Constitution. "The Constitution, in all of its provisions, looks to an indestructible Union, composed of indestructible states." See RECONSTRUCTION. **Reference:** A. B. Hart, *Salmon P. Chase* (1899).

A. C. McL.

INDETERMINATE SENTENCE. An indeterminate sentence is one which does not have a fixed time limit. Theoretically the prisoner should be sentenced to remain in prison until he has been reformed, just as an insane patient or a sick patient is committed to a hospital until cured. In practice, indeterminate or indefinite sentences, as they are sometimes called, usually have a maximum limit and a minimum limit. The prisoner may be sentenced for not less than two or more than ten years; or for a period not exceeding the maximum term provided by law for the crime of which he is convicted.

The system was first applied in the United States by a New York law of 1823, providing that the boys in the House of Refuge, instead of being sentenced for fixed terms should be committed to the guardianship of the board of directors, subject to parole and discharge at the discretion of the board.

The indeterminate sentence as applied to adults was first used in reformatories for young men, the New York State reformatory at Elmira, the Massachusetts reformatory at Concord and the Ohio state reformatory at

Mansfield; but in recent years many states have extended the indeterminate sentence system to apply to convicts in state prisons as well. See CRIMINAL, REFORMATION OF; PAROLE SYSTEM; PRISONERS, PROBATION OF. References: Am. Prison Assoc. (formerly Nat. Prison Assoc.), *Reports* (1880 to date); C. R. Henderson, *Penal and Reformatory Institutions* (1910). HASTINGS H. HART.

INDEXES AND ARCHIVES, BUREAU OF. The Bureau of Indexes and Archives is one of the bureaus of the Department of State (*see* STATE, DEPARTMENT OF). It is charged with the preparation and maintenance of department indexes and with the preservation of the archives; of chief interest is the diplomatic and consular correspondence. See CONSULAR REPORTS; DIPLOMATIC CORRESPONDENCE. References: Secretary of State, *Annual Reports;* J. A. Fairlie, *National Administration of the U. S.* (1905); C. H. Van Tyne and W. G. Leland, *Guide to the Archives* (2d ed., 1907), 3–32. A. N. H.

INDIANA

Indiana Territory.—In the seventeenth and eighteenth centuries the French obtained, by exploration and conquest, the territory now known as Indiana. They held it until the close of the French and Indian War, when, by the Treaty of 1763, it was transferred to the British. During the Revolutionary War (1779), George Rogers Clark, at the head of an expedition sent out by Virginia, wrested the control of the territory from the British, and when peace was made in 1783 it became a part of the United States. Soon after the treaty (March 1, 1784) Virginia ceded her claim to this territory to the United States, and at about the same time other states claiming land in this locality relinquished their claims in favor of the general Government. These cessions gave the United States control of the so-called Northwest Territory.

A temporary government was set up in 1784 and a permanent one was established by means of the Ordinance of 1787. In 1800 an act of Congress divided the Northwest Territory into two parts by means of a line running almost due north and south near the present boundary line between the states of Indiana and Ohio. The land east of this line retained the name "Northwest Territory," while that on the west was called "Indiana Territory." Indiana Territory was, thus, in 1800 vastly greater in area than the present state of Indiana. The first reduction in size took place in 1805, when Michigan was set off as a separate territory. Four years later (1809) all of the land west of the present western boundary of Indiana was set off by act of Congress and called "Illinois Territory." By 1809, then, Indiana was reduced to about its present boundaries.

The territorial capital of Indiana was established at Vincennes in 1800, where it remained until transferred in 1813 to Corydon, the present county seat of Harrison County. Soon after this time the people began to think seriously of statehood, and on December 14, 1815, the territorial legislature petitioned Congress for admission to the Union. In response to this petition Congress passed an enabling act which was approved April 19, 1816. In accordance with this act delegates were chosen to a constitutional convention which met at Corydon on the 10th of June and framed the first constitution for the state. Later in the same year (December 11, 1816) Indiana was formally admitted into the Union by a resolution of Congress.

Constitution of 1816.—The first constitution of Indiana contained a considerable amount of local and legal detail but did not differ in its essential features from the other state constitutions of this period. It contained a bill of rights (*see*), provided for the three departments of government, as was customary, and contained many provisions and clauses copied from the Declaration of Independence and the Constitution of the United States. The right to vote was restricted to "white male citizens of the United States, of the age of twenty-one and upwards." Provision was made for a state militia and for a system of state education culminating in a state university. The language of the Ordinance of 1787 (*see*) was used in prohibiting slavery. A candidate offering "any bribe, threat, or reward to procure his election" as governor, lieutenant-governor, Senator, or Representative was disqualified for the term for which he was elected. Provision was made for a public library in every county of the state and it was declared to be the duty of the general assembly "to form a penal code, founded on the principles of reformation, and not of vindictive justice." The constitution also provided that the question of a constitutional convention to "amend or change" the constitution should be submitted to the voters of the state every twelfth year after the constitution went into effect.

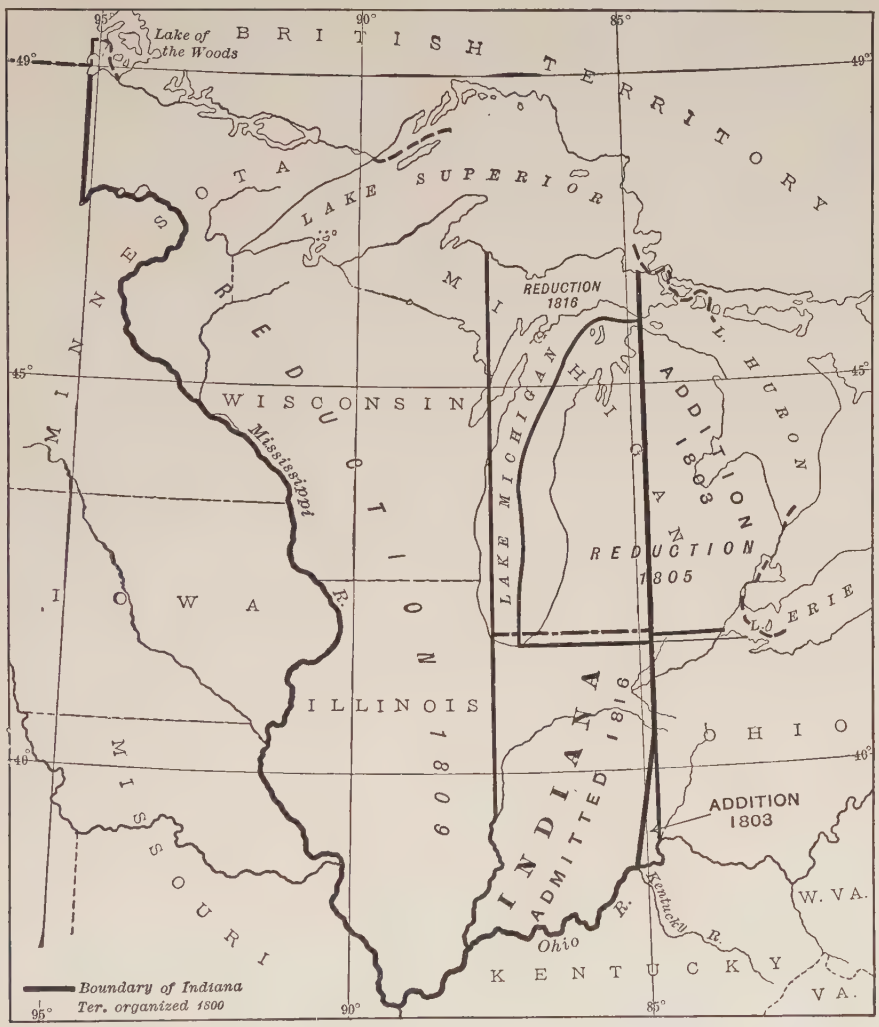
The constitution of 1816 was put into operation in the usual way, and the capital of the state remained at Corydon until removed to Indianapolis in 1825. In 1850 the state legislature made provision for a convention to frame a new constitution. It was composed of one hundred and fifty delegates and convened at Indianapolis on Oct. 7, 1850. It remained in session for four months and the result of its labors was the constitution under which the

state of Indiana is now governed. This constitution was ratified by the people on the 4th of August, 1851, and went into effect on the first of November following.

Constitution of 1851.—The second constitution of the state was completed on the 10th of February, 1851, and does not differ, in its main outlines, from the other state constitutions adopted about this time. It contains an elaborate bill of rights of thirty-seven sections, many of whose provisions are drawn from the Constitution of the United States. The customary division of the powers of government into three departments is maintained, but the privilege of voting is no longer confined, as in the constitution of 1816, to citizens of the United States. Aliens who have resided in the United States one year and who have declared their intention to become citizens and who, in addition, have fulfilled certain minor conditions as to age and residence, are now entitled to vote.

The legislative power of the state is vested in the "general assembly," consisting of a senate and house of representatives. The senate is composed of fifty members and cannot exceed that number, while the house has one hundred members, which is also the maximum number. A majority of all the members elected to each house is necessary for the passage of a bill or joint resolution. A regular session of the legislature is limited by the constitution to sixty-one days and a special session to forty days. Under the present constitution the legislature meets regularly once in two years; under the previous constitution it met annually.

The executive power is placed in the hands of the governor, who is elected for a term of four years and is not eligible to serve for "more



BOUNDARIES OF THE STATE OF INDIANA, SHOWING THE TERRITORIAL CHANGES

than four years in any period of eight years." No one has been elected to the governor's office more than once under the present constitution. The exercise of the veto power is somewhat unusual. As noted above, a bill in order to be passed by the legislature must receive the votes of a majority of all the members elected to each house. After its passage by the two houses it goes to the governor for his signature. If he disapproves of it he returns it with his objections to the house in which it originated. It is then put upon its passage a second time and if it again receives the votes of a majority of all the members elected to each house, it becomes a law in spite of the governor's veto.

The constitution also provides for the usual list of administrative officers including a secretary of state, an auditor, a treasurer, an attorney general, and a superintendent of public instruction, all elected by the people.

There is nothing essentially peculiar about the judicial system of the state except, perhaps, the constitutional provision to the effect that "tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law." The idea underlying such tribunals was an advanced one in 1851, but no such courts have ever been set up in the state. Under the constitution of 1816 the judges of the state supreme court were appointed by the governor with the consent of the senate. Under the present constitution all of the state judges are elected by the people. The provision for admission to practice law is rather peculiar. The constitution says that "every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." Efforts have been made from time to time to establish certain educational requirements for admission to the bar but have uniformly failed. Only a small fractional part of the voters have been sufficiently interested to vote either for or against the amendment (*see* PROFESSIONS AND CALLINGS).

The present constitution is very difficult of amendment. The process is this. The proposed amendment must be agreed to by a majority of the members elected to each of the two houses of the legislature; it must then be referred to the legislature chosen at the next general election. If it is approved by a majority of all the members elected to each of the two houses it is submitted to the voters of the state for ratification or rejection. On account of the difficulty of the process the constitution has been amended only a very few times.

Local Government.—The local government of Indiana is of the mixed township-county type. A few fundamental provisions appear in the constitution, but the government of the lesser units is based, for the most part, upon acts of the legislature. There are ninety-two counties in the state and each one of these is presided over by a board of county commissioners consisting of three members. These commissioners manage the buisness affairs of the county and are its most important administrative officers. They make contracts for the county and control the county property. They authorize the construction of roads and public buildings. They fix the county tax levy, pass upon applications for liquor licenses, appoint health officers, food inspectors, and certain election officers. The powers of the county commissioners in Indiana are both extensive and important.

In addition to the commissioners, each county has the customary list of officers including the sheriff, auditor, treasurer, clerk, and recorder, elected by the people, and the county superintendent of schools, elected by the township trustees.

The county is divided into townships, each of which is presided over by a township trustee. The trustee has charge of the finances of the township, of its roads, schools, and poor-relief. In short, he is the business manager of the township.

The cities and towns are, for the most part, under a uniform system of government. A few of the larger cities have special charters granted to them by the general assembly, but the remaining cities and towns are governed under the provisions of the so-called "Cities and Towns Act." The cities are classified according to population and the form of government is the same for all cities in the same class. Much power is centralized in the hands of the mayor.

Education.—The educational system of Indiana is quite similar to that adopted by other states of the Middle West. It is made up of the common or elementary schools, the township and city high schools, the state university at Bloomington, the state normal school at Terre Haute, and the state institute of agriculture and technology, or Purdue University, at West Lafayette. The state board of education, which exercises a general supervision over the elementary and high schools of the state, is made up of the presidents of the three state institutions, the superintendents of the three largest cities, the state superintendent of public instruction, and six members appointed by the governor.

Party Politics.—In politics, Indiana is a "doubtful" state (*see*). In the presidential elections from 1820 to 1832, inclusive, the state was Democratic; in the elections of 1836 and 1840 it was carried by the Whigs; in the elections from 1844 to 1856, inclusive, it was Democratic; from 1850 to 1872 it was Republican; in 1876 it was carried by the Democrats; in 1880 by the Republicans; in 1884 by the Democrats; in 1888 by the Republicans; in 1892 by the Democrats; from 1892 to 1908 by the Republicans, and in 1912 by the Democrats. In-

diana has participated in twenty-four presidential elections and has cast its electoral votes for the successful candidate in twenty instances.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; GOVERNOR; STATE GOVERNMENTS, CHARACTERISTICS OF; STATE LEGISLATURE; VETO POWER.

References: J. P. Dunn, *Indiana* (1888); J. B. Dillon, *Hist. of Indiana* (cir. 1850); E. E. Moore, *Century of Indiana* (1910); W. W. Thornton, *Government of Indiana* (1898); W. A. Rawles, *Centralizing Tendencies in the Administration of Indiana* (1903); B. P. Poore, *Charters and Constitutions* (1878), I; F. N. Thorpe, *Constitutions and Charters* (1909), II, 1053–1094. THOMAS F. MORAN.

INDIAN COMMISSIONER. The administrative head of the United States Indian service is the Commissioner of Indian Affairs. His bureau was originally under the War Department, where its prescribed duties were to take charge of the appropriations for annuities and current expenses, including the audit of accounts and vouchers, to examine and report on claims, and to conduct the ordinary correspondence of the Department with its functionaries in the Indian field. The chief of the bureau was then styled Superintendent of Indian Trade, commerce being the broad term under which the Constitution grouped the relations of the Government with the Indian tribes. The present office of Commissioner was created in 1832, and charged with the "direction and management of all Indian affairs and of all matters arising out of Indian relations." When the Department of the Interior (*see*) was organized in 1849, the Indian bureau was transferred to it, and has remained there ever since." There have been, in the last eighty years, 29 commissioners; and the Indian service now includes more than 5,000 persons, of whom all but about 250 are stationed in the western part of the country. See INDIAN POLICY; INDIANS, CONSTITUTIONAL AND LEGAL STATUS OF; INTERIOR, DEPARTMENT OF. References: Dept. of War, Officers of Indian Affairs, *Annual Reports* (1825–1848); Commissioner of Indian Affairs, *Annual Reports* (1849 to date); "Handbook of Am. Indians" in Bureau of Am. Ethnology, *Bulletin No. 30* (1910), II; F. E. Leupp, *The Indian and His Problem* (1910), ch. vi. F. E. L.

INDIAN COMMISSIONERS, BOARD OF. The Indian appropriation act of 1869, following the exposure of some serious frauds in conection with the Government's Indian relations, authorized the President to organize a board of commissioners, consisting of not more than ten men "eminent for their intelligence and philanthropy, to serve without pecuniary compensation" in supervising the disbursement of appropriations for the Indian establishment. The board counsels with the executive authorities in Washington, assists at the award of contracts for supplies and the inspection of goods furnished, investigates conditions at agencies and schools, and otherwise serves as sponsor to the public for the conduct of Indian affairs. See INDIAN COMMISSIONER; INDIAN POLICY. References: Board of Indian Commissioners, *Annual Reports* (1870 to date); "Handbook of American Indians" in Bureau of Am. Ethnology, *Bulletin No. 30* (1910), II. F. E. L.

INDIAN GOVERNMENT. Stages of Growth.—The study of the forms of government formerly in existence among the American Indians presents itself in two aspects—on the one hand is the question, what different stages in the growth of governmental institutions were exemplified among the Indians; and on the other, what general features may be said to be characteristic of the governmental organization of the Indians as a whole.

Several different stages in the development of governmental institutions were found among the American Indians. Simplest and most rudimentary was the type best shown by the central Eskimo, in which the largest real unit was the family or a group of two or three families who were house-mates. At the head of such a group was usually one of the older men who occupied the position of advisor. He had no means of coercing the members of the group, and no real authority, the extent of his influence depending on his personal reputation and ability. Under such an extremely simple form of government there were no clans and no permanent larger groups.

A somewhat more advanced type is found among many of the tribes of California, the interior plateau and the Pacific coast. Here the unit was larger, comprising a group of families making up either a village community or a more or less coherent but nomadic band. Such groups rarely exceeded a few hundreds in number. The position of leader or chief was as a rule partly hereditary, partly elective, as the hereditary successor might be passed over if incompetent or might be deposed. Sometimes his position depended almost entirely on wealth. The power of such a leader again depended mainly upon his individual ability and to a large extent the position was merely advisory. An informal council of older men was often present in this stage.

Further development was shown in the form of governmental organization most widely spread, and which, with variation was present among the greater part of the tribes in the continent. In this, the unit was the tribe, generally composed of several clan groups. The leadership of each of these clans was usually hereditary in a particular family, and one of these clan leaders was hereditarily chief of the tribe. The tribal chief was assisted by a coun-

cil, normally made up of the clan heads or specially chosen clan representatives. The amount of actual power possessed by such a tribal chief varied greatly, as did the deference shown him. Often, as among the tribes of the south Atlantic and Gulf states, the chief was surrounded with considerable pomp, and often wielded considerable power. Usually in this stage, there was, apart from this hereditary peace chief, a special war-chief, who was elective in character.

In only one instance in America north of Mexico was there a formal development of a higher type, namely in the well-known league of the Iroquois. Here the unit was a group of tribes, federated for offense and defense, and governed by an elective council composed of representatives of the constituent tribes. Each tribe was autonomous in its local affairs, the control being in the hands of its elective representatives to the federal council, and only in matters concerning the federation as a whole, did the league council have jurisdiction. A study of the organization of this famous league, the changes which took place in it during the century and a half of prominence, and the causes which led to its ultimate downfall, cannot fail to be of value to the student of government.

General Characteristics.—Apart from the question of the different stages in governmental organization found among the Indians, certain general characteristics may be noted. Most striking perhaps is the almost total absence in America of despotic or monarchical forms of government. Even where the chiefs were strongest, their decisions and orders were subject to the approval of the council; and in Mexico and Peru where the highest developments of governmental institutions took place the ultimate sanction lay in the hands of the council, and the chief, in theory at least, was merely their mouthpiece. Of almost equal importance was the inviolability of the freedom of the individual. However great the power of the chief, the individual was always free in theory, and often in fact, and could not be coerced. There existed indeed over most of the continent, no formal machinery to enforce the wishes either of the chief or council, and although, to be sure, a powerful chief might and often did punish or even kill a person who refused to carry out his orders, yet this was in large part in the way of personal revenge and not as punishment for infraction of the law. Another feature of note was the important position held by women in the government of some tribes, notably among the Iroquois. Here the women were in theory the actual rulers, the men who formed the tribal and federal councils being only their representatives. The part also played by the shaman and priest is of interest. In general it may be said that in the less developed forms of government the shaman held comparatively a greater place, often controlling and really ruling the people through their religious fears, when there was no efficient chief. In some portions of the country, as for example the southwest, the power of the priests and secret societies largely controlled by them, was very great, and one might almost speak of the government in such cases as a modified theocracy.

See ABORIGINES; FRONTIER; WARS OF THE UNITED STATES.

References: "Handbook of American Indians" in Bureau of American Ethnology, *Bulletin No. 30* (1907–1910); J. W. Powell, "Wyandot Government" in Bureau of Ethnology, *First Report*, 1881, 57–89; A. E. Bandelier, "On the Social Organization and Mode of Government of the Ancient Mexicans" in Peabody Museum, *12th Report*, 1880, 557–700.

ROLAND B. DIXON.

INDIAN POLICY OF THE UNITED STATES

Education.—It is only within comparatively recent years that the United States can be said to have had a definite Indian policy. In colonial times the conversion of the Indians to Christianity was expected and promoted; hence several leading seminaries of learning were specially endowed for the benefit of those Indian youth who could be gathered in as students, while at others the doors were opened to them so that they could be trained side by side with their white contemporaries. The earliest movement in this direction was at Henrico College in Virginia. The charter of what is now Harvard University, issued in 1650, described its object as the "education of the English and Indian youth in this country in knowledge and godlyness," and the first brick edifice on the grounds was for the Indian College, built about 1660. Perhaps thirty years later an Indian department was added to William and Mary College; Dartmouth actually owes its origin to an institution founded to prepare young Indian men for missionary undertakings among their own people; and Princeton long figured as a leader in Indian work. The Indians, however, manifested little of the expected enthusiasm, and the failure of one such enterprise after another led to the abandonment of all, and to the transfer of responsibility for the education of the Indians in letters and piety to the religious bodies maintaining missions among the native tribes. It was not till 1819 that the nation at large took any decided step toward the establishment

and support of Indian schools, though appropriations were earlier voted by Congress for the aid of individual Indian students at various institutions.

Indian Territory.—When, after the war of the Revolution, a strong tide of migration set westward, the Federal Government realized the importance of establishing permanent relations with tribes which till then had played but an inconspicuous part in its calculations. No definite program was announced, but, broadly speaking, the plan was to hold out the olive branch alike to all; those who accepted it willingly were to enjoy such favor as the Government had to bestow, and to be encouraged, by gifts and instruction, in the pursuit of agriculture and the kindred arts of peace; those who were reluctant, but not powerful enough to resist by warfare the beneficent aggression of the whites, were to be subdued and civilized by compulsion; and those who were incorrigibly hostile were to be exterminated.

The working-out of this plan involved the negotiation of many treaties (*see* INDIAN TREATIES), mostly based on a theory of race segregation which found its highest exponent in the establishment, soon after 1830, of the Indian Territory. Here, beyond what in those days seemed likely to be the uttermost limits of civilization, the Government planted five of the most advanced tribes or "nations," the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, guaranteed them against outside molestation, and gave them an opportunity to prove their capacity for managing their own affairs on lines generally parallel to those pursued by the people of the United States.

The experiment, continued through more than sixty years, ended in a most deplorable collapse. The worst native elements obtained control of the legislative and executive machinery, connived at the immigration of an equally undesirable class of whites, and exploited the natural resources of the region for their private profit. The so called "national governments" were only the aboriginal patriarchies under new forms and titles; their courts being weak or venal, the territory was presently overrun by fugitives from justice from the neighboring states, till outlawry became the rule, and Congress was forced to take notice of an intolerable situation and adopt a radical plan of reorganization, the final fruits of which have been the admission of the Indian Territory into the Union as part of the state of Oklahoma.

Reservations.—Another device, most widely followed, was that of gathering the tribes on reservations (*see* INDIAN RESERVATIONS) where they could more easily be kept out of mischief among themselves, protected against the machinations of evil-minded outsiders, and instructed in the elementary industries, under the care of agents appointed by the President. This plan, however, proved on the side of excessive paternalism as defective as the other had on the side of excessive liberty. The Indians did not take kindly to methodical habits of work under their instructors, who were too often incompetent to teach; as an inducement to remain peaceable, they were lavishly supplied with rations of food and clothing; these goods having to be bought under contracts awarded to the lowest bidders, an opening was made for all sorts of scandals, turning on the bad quality of materials furnished, outrageous prices obtained by combinations between bidders, the use of false weights and measures, favoritism in the award of contracts, and trickery in inspection and distribution. The agencies were so far from Washington that for many years investigations were almost prohibitively expensive, and visits from responsible officers very infrequent. The Indians who enjoyed the gratuities became pauperized and worse; for in many cases they learned that if the source of supply seemed a trifle sluggish, it could always be started into activity again by a threat of revolt.

Not a few of the agents, too, having been clothed with extraordinary powers in orders to maintain their supremacy and that of the Government on their reservations, were lured thereby into acts of petty tyranny; and as they were commonly men of enough political importance at home to command a ready hearing at Washington, while the Indians had no means of presenting their grievances except through the agents and then only by speaking as tribes and not as persons, the situation in the Indian country grew more and more unsatisfactory.

Citizenship: Dawes Law.—At a critical juncture, under the leadership of the late Senator Dawes of Massachusetts, Congress extended to the Indians at large, by the general allotment act of 1887, a plan which had already been tried under special legislation in the case of a few tribes. The Dawes law authorized the President, at his discretion, to carve up any reservation, allotting to each member of the resident tribe or tribes a farm of 40, or 80, or 160 acres, according to certain stated conditions, and to issue to him a patent under which the Government was to hold his land in trust for him for 25 years and then present him with a title in fee. The trust patent conferred upon the allottee all the privileges of a citizen and voter except the right to alienate or encumber his land, and protected the land from taxation during the life of the trust. From that hour may be said to have begun the Government's recognition of Indians as individuals, as distinguished from so many undivided parts of a tribal unit, and the first step was made toward the establishment of a permanent policy in dealing with them officially; the public sale of land which remained unallotted brought into the neighborhood a thrifty class of white settlers, whose development of its resources profit-

ed the Indians not less than themselves; and the proceeds of the sales were divided between the Indians per capita or placed at interest in the United States Treasury to their credit.

Obstacles to Progress.—Meanwhile, active measures had been taken by the Government for combatting the two great obstacles to Indian progress, ignorance and intemperance. The unfortunates, confined on reservations where they could not hunt game after the fashion of their ancestors, having no literature or other resources of amusement enjoyed by more advanced peoples, sought distraction in gambling and drink. Of the two forms of dissipation, gambling was the less harmful, for they had no large possessions to lose; but the fiery liquors which were smuggled into the reservations wrought deadly havoc, exciting the drinkers to deeds of violence and leaving a trail of disease and decadence everywhere. The federal statutes, as well as the complementary enactments of most of the western legislatures, furnished penalties enough to break up the traffic in intoxicants among Indians whenever courts and juries were disposed to do their full duty, and Congress presently began the practice of making a special appropriation for suppressing such trade.

The superstitions of the Indians, pivoting largely on their conceptions of a connection between necromancy and the healing art, made them easy victims to the wiles of their so-called medicine men. Interwoven with all this was their employment of dancing as a remedial measure as well as an instrumentality of worship, their faith in the influence of certain signs and symbols, and their almost universal assumption that any notable departure from ancient Indian customs in matters of dress, food, housing, family life, and the like, would presage the downfall of their race. Grouping these conservative forces together as serious impediments to the Indian's progress toward civilization, the Government for a long while made the mistake of trying to abolish them by prohibitive rules and the punishment of his poor attempts to hold fast to some of these decaying remnants of his old life. Even his native tongue, his harmless ornaments and trinkets, and his manner of wearing his hair, came under the ban of condemnation. Naturally this crusade stirred all the resistent impulses within him, since it failed to appeal to his reason; and in course of time it had to be abandoned as not only having no logical foundation and involving a great waste of energy, but because it came to be recognized as a worse obstruction than the supposed evils it had set out to abate.

Schools.—School work on the reservations moved at a slow pace for several years, for obvious reasons. The adult Indians, too old to take readily to their changed circumstances, and unable to see that the future held anything for their race, were indifferent about fitting their children to cope with the new social order. Legislation of very general scope was enacted, designed to make school attendance compulsory; a system of government schools was set up, affording all the advantages offered by the mission schools, but excluding secretarian religious instruction; and, to increase the attractions of these institutions, free lodging, clothing, food and medical attendance were furnished, as well as free tuition. In short, the pauperizing influences of reservation life were extended to school life, though possibly with more of an excuse for their existence. In the same way that the ration system had to be reduced in later years to a minimum, so the unnatural superfluities of the school system are now undergoing a steady process of elimination. The Government schools, after taking over from the mission schools the main part of the burden of Indian education, are in their turn making way for the local common schools of the districts in which the Indians live, provided they are near enough to the Indian homes to be available for daily attendance by the children; and many other efforts are now making to stimulate among the Indians and the white settlers in those parts of the West which still have the frontier character, a spirit of neighborly coöperation, both for their own present interests and for those of the younger generations who are destined to live so near together.

The Indian allotee, clothed with the privileges but shielded from the responsibilities of citizenship, fell an easy prey to the designs of the spoilers. Liquor-dealers who had been too prudent to trifle with a red ward, openly defied the Government to prevent their selling intoxicants to a red citizen as freely as to a white one, and won a technical victory in the courts; unscrupulous traders encouraged him to run into debt and mortgage his ballot as security for payment; shrewd assessors found him out and appraised his personal effects for taxation at valuations which would make up for the exemption of his land. In 1906, therefore, at the instance of Representative Burke of South Dakota, the Dawes allotment law was amended so as to defer citizenship till the expiration of the trust, but with a provision for the release of the trust whenever the Secretary of the Interior is satisfied of the allotee's competency to manage his own affairs, without waiting the prescribed term of twenty-five years. This amendment, although it could not unmake the Indian citizens already qualified under the law of 1887, swept away for future purposes the absurd feature of that law which, while branding an Indian as not intelligent enough to be allowed to dispose of his own property, gave him a ballot wherewith to dispose of the property of his competent fellow citizens. It also enabled the Government to stand effectively between the incompetent allottee and his tempters and oppressors, to

prosecute dramsellers and swindlers in his behalf, and to make the trust period a period of real tutelage, in which he should be trained for the citizenship he was to receive at its close. Out of the new departure has grown up a practice of letting the more intelligent Indians, while still wards of the Government, transact a constantly larger and larger share of their own business.

Encouragement to Leave the Reservations.—Along with this change, another has taken place. Whereas reservations were established for the express purpose of confining Indians within their limits, the Government is now not only putting no obstacles in the way of their going and coming with substantially the same freedom enjoyed by other persons, but offering them every incentive, where remunerative employment is lacking on the reservations, to go out into the world in search of it. Large gangs of Indian laborers are now employed every year in railroad building, digging irrigation canals, logging in the forests and working in the harvest fields. In all these occupations they come into close contact and active competition with white laborers, see how people live in civilized communities, and gradually outgrow race prejudices which were only intensified by the old custom of segregation.

Summary.—Thus, from a vague and inauspicious beginning, the United States Government has little by little developed an Indian policy which is today pretty well charted and faithfully followed. Summarized in simple terms, its aim may be stated as follows:

(1) To push, with all the speed consonant with safety, the allotment of the lands on Indian reservations everywhere, for the purpose of giving every Indian his separate homestead and getting rid, at the earliest practicable day, of the reservation system and all its associations; throwing open the surplus lands to white settlement, and in every proper way promoting and hastening the development of the western country, so that the Indian may enjoy his share of its benefits.

(2) To wipe out, as soon as may be, the inconsistencies and anomalies of the old treaty system, and put the financial relations of the Government and the tribes upon a rational business footing until the last annuity can be commuted and cancelled, the last dollar of the interest-bearing trust funds distributed, and the books closed forever.

(3) To reverse the old ideal of race segregation, and fuse the Indians as rapidly as practicable into the general body politic, with the same privileges, rights and duties as all other citizens; and, to this end, to encourage closer social relations between the white and Indian races, in the belief that the Indian will acquire civilization more readily by absorption than from precept.

(4) To recognize the successive stages of evolution between the primitive Indian and the Indian fitted for citizenship, by adapting to each stage those means of control or guidance best suited to its needs, ranging from close guardianship, with direct rewards and penalties, up to the most general oversight and advice, supported by no sanctions except the operation of the law of cause and effect.

(5) To emphasize as little as possible the administrative or disciplinary details between the two extremes, and limit the Indian's freedom of thought and action and mode of living no more than that of a member of any other race subject to the laws of the republic.

As will be seen, the existing policy is to no small extent automatic. It is also moderate, avoiding alike the non-progressive practice of treating the Indian as a child who would never mature, and the perils of over-haste in forcing upon him the responsibilities of maturity before he is even crudely equipped to meet them. This quality of moderation constitutes its appeal to the intelligence and the humanity of the American people.

See ABORIGINES; BOUNDARIES, INTERIOR; CITIZENSHIP; DECLARATION OF INTENTION TO BE NATURALIZED; FAR WEST; FRONTIER; PUBLIC LANDS; TERRITORIES; WARS OF THE UNITED STATES; and under INDIAN.

References: Commission to the Five Civilized Tribes, *Annual Reports* (1894–1905), and Index to same (1906); Garrick Mallery, "The Former and Present Number of Our Indians" in Am. Assoc. for the Advancement of Sci., *Proceedings*, 1877; F. E. Leupp, *The Indian and His Problem* (1910); W. H. Hailmann, *Education of the Indian* (1904); E. S. Curtis, *Am. Indian* (1907); E. S. Ellis, *The United States* (1892); G. W. Maypenny, *Our Indian Wards* (1880); "Handbook of Am. Indians" in Bureau of Am. Ethmology, *Bulletin No. 30* (1910), II; G. W. James, *What the White Race May Learn from the Indian* (1908).

FRANCIS E. LEUPP.

INDIAN RESERVATIONS

Purpose.—Indian reservations are areas set apart by the Government for the sole occupancy of a tribe or tribes, or one or more fragments of tribes, the land on each reservation being, at the outset, held in common by the occupants. Their establishment was originally an expedient for getting Indian disturbers out of the path of white progress and permitting the development of the western country. The belief was general, also, in the earlier part of the last century, that the only hope for peaceful relations between the white and red

INDIAN RESERVATIONS
1910
INDIAN RESERVATIONS 1910
OPENED
CONTINUATION OF
INDIAN RESERVATIONS
AS NUMBERED
(IN OKLAHOMA)
1- PAWNEE
2- OTO
3- SAC AND FOX
4- IOWA
5- KICKAPOO
6- POTTAWATOMIE
7- PONCA
8- WICHITA
9- SEMINOLE
10- CREEK
11- CHEYENNE AND ARAPAHO
RESERVATIONS IN
NORTHEASTERN
OKLAHOMA
1-QUAPAWS
2-PEORIAS
3-MODOC
4-SHAWNEES
5-OTTAWAS
6-WYANDOTTES
7-SENECAS
KANSAS
MISSOURI
CHEROKEE
Longitude
West from
Greenwich
L.L.P. OATES CO., N.Y.

races lay in keeping them well separated, and the reservation plan seemed the simplest means to that end. At one time the hope was entertained that if all the Indians could be collected in two or three large reservations, these might in due course be erected into Indian states and admitted to representation in Congress. Out of this theory grew the Indian Territory experiment (*see* INDIAN POLICY).

The plan to which the Government finally settled down contemplated not only the separation of the Indians from the whites, but such a separation of the reservations from each other as to preclude any quick massing of Indians with hostile designs; and this purpose was furthered by regulations forbidding the entry of any non-Indian into a reservation, or the departure of any Indian from one, except by permission of the officer in charge.

Treaty and Executive-Order Reservations.—According to the manner of their creation, reservations have been roughly classified as "treaty" and "executive-order" reservations. The former originated in conventions between Government and Indians (*see* INDIAN TREATIES) whereby, for example, a tribe agreed to exchange its home in one place for another selected for it by the Government, or accepted a gift of land as a guaranty for its good behavior. An executive-order reservation originated in a proclamation by the President setting apart certain of the public lands for the use of a band of Indians otherwise homeless. Congress, also, has occasionally passed acts creating reservations, but these have been popularly classed with treaty reservations, because the latter have usually required legislation to make the creative treaties effective. In earlier days very sharp distinctions were drawn between treaty and executive-order reservations, as to such matters as the manner of extinguishing the Indian title, the control of the Indians over the natural products and resources, etc.; but the more recent tendency has been toward the reduction of such discriminations. In compensation for their confinement on reservations, and in view of the scarcity of wild game, most of the stronger tribes drew from the Government a stipulation for food-rations for an indefinite period, a provision which resulted in wide spread idleness, vice and pauperism among a once hardy and self-respecting people.

In size, reservations vary from a few hundred acres to nine or ten million. The Navajo reservation in Arizona, New Mexico and Utah, is the largest, embracing nearly 15,000 square miles. As to fertility and mineral wealth they vary greatly, the Osage reservation in Oklahoma being the richest for agriculture, stock-raising and oil-production.

Agents.—Every reservation, as soon as created, was placed in charge of a Government representative styled an agent, who was appointed by the President, and, with his clerical and industrial staff, lived on the ground. His functions, beyond a few technical requirements as to accounting and the like, were never defined by statute, and he exercised a jurisdiction resembling that of a Pasha in an oriental province, though subject always to review by his superiors at Washington. On many reservations, petty tribunals were set up for the trial of Indians accused of misdemeanors; but as the native judges were selected by the agent, this was merely a device of indirection. The agent's modified despotism found its only justification in the practical necessity for a centre of authority somewhere in a wild region where no organized machinery of public justice could be called promptly into play for the preservation of order and the protection of human life and property. As civilization gradually crept into his neighborhood, however, his tacitly recognized powers shrank correspondingly. Also, as rapidly as practicable since 1893, the duties formerly performed by agents have been transferred to superintendents of Indian schools, who are subject to the civil service law and rules, till the entire agency service is now out of political control.

With a view to economies in administration, it was once the custom, whenever it could conveniently be done, to put one agent in charge of two or more reservations; but since the upbuilding of the individual Indian rather than the mere domination of the tribe has become the chief interest of the Government, the trend has been largely the other way, and several big agencies and reservations have been broken into parts small enough to allow the one functionary in charge of each to maintain closer personal relations with the Indians for whose welfare he is responsible. This practice has caused a considerable increase in the number of reservations. An official list prepared in 1908 placed the number at 161; since then, however, the process of subdivision and the purchase of a few small tracts for homeless bands have brought the total nearer to 200.

Traders.—Trade on the reservations has always been unrestricted as between the occupant Indians; and white traders have been licensed to set up stores where the conditions seemed to warrant it. Proofs of good moral character and financial responsibility, besides a large bond obligating the licensee to obey the laws and the regulations of the Indian Office, are required of every applicant not of Indian blood. Formerly these concessions were awarded more or less by favor and were enormously profitable, the Indians being expected to confine their dealings to the licensed traders; but in the interest of broader markets for the Indians, and a sharper competition in prices, the practice has been more and more relaxed. Meanwhile, towns have sprung up on the borders of reservations which a few years ago were remote from all civilization, and the Indians are now encouraged to buy and sell where they can do

so to the best advantage. With the loss of their monopolistic character, and the efforts of the Government to prevent the Indians from wasting their little means, the trading posts have become so much less lucrative that the demand for licenses has fallen off; and trade in the Indian country, barring the prohibition on intoxicants, is now substantially as free as elsewhere.

See PUBLIC LANDS; and under INDIAN.

References: C. C. Royce, "Indian Land Cessions to the U. S." in Bureau of American Ethnology, *Report*, 1899; S. K. Humphrey, *The Indian Dispossessed* (1905); Charles M. Harvey, "The Red Man's Last Roll-Call" in *Atlantic Monthly*, XCVII, March, 1906; J. B. Thayer, "A People Without Law" in *ibid*, Oct.-Nov., 1891; "Handbook of Am. Indians" in Bureau of Am. Ethnology, *Bulletin No. 30*, 1910, II; Commissioner of Indian Affairs, *Annual Report*, 1908. FRANCIS E. LEUPP.

INDIAN TERRITORY. Title to the soil of the Indian Territory was acquired by the United States through the Louisiana Purchase. This section was originally intended for an Indian commonwealth, as the Federal Government, soon after the War of 1812, adopted the policy of transferring the civilized Indians from the southern states to the unsettled lands west of the Mississippi. This plan was consummated by a series of treaties from 1820 to 1840, the most important of these being with the Choctaws in 1820 and with the Cherokees in 1828 and 1833. These treaties defined the western boundary of Arkansas and the northern limits of the new lands of the Cherokees; thus virtually establishing the outlines of the present state of Oklahoma. The Indians assigned to this tract were known as the Five Civilized Tribes, and included the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles.

These tribes were guaranteed the privilege of local self-government. The Cherokees had adopted a constitution while in Georgia. This they remodeled and improved in 1839, and their plan included three distinct departments of government, executive, legislative, and judicial. The executive department centered in the principal chief, who saw that the laws were enforced, was the representative of the government in external affairs and exercised a veto power on legislative acts. The legislative function was vested in a two chamber legislature, the upper house being known as the senate. The judicial department consisted of a "supreme court and such circuit and inferior courts as the national council may from time to time ordain and establish."

The Choctaw constitution of 1842 differed from that of the Cherokees in the one noticeable particular of a plural executive consisting of four chiefs, each chosen from one of the four governmental districts. The Chickasaws, who had previously attached themselves to the Choctaws for governmental purposes, withdrew in the year 1857, and adopted a constitution of their own. The Indian governments, as a whole, operated quietly and efficiently. Peace and order were preserved; human life was safe, and property rights were respected. The Federal Government of th United States had removed all white settlers from the territory at the time of the original grant, and evidently intended to keep faith with the Indians and prevent intrusion on the part of the whites.

The coming of the railroads in the Indian Territory (1870) made further exclusion of the white settler impossible, and by 1890 the whites outnumbered the Indians. In 1868, the population, according to the Peace Commission figures, was 47,396; in 1907 by the special statehood census, 681,115, of whom Indians numbered 52,482, negroes 36,900 and whites 302,680.

See INDIAN POLICY; INDIAN RESERVATIONS; OKLAHOMA.

References: A. H. Abel, "Proposals for an Indian State, 1778–1878" in Am. Hist. Assoc., *Annual Report*, 1907, I, 89–102, "Hist. of Events Resulting in Indian Consolidation West of the Mississippi" in *ibid*, 1906, I, 235–450; Commissioner of Indian Affairs, *Reports* (1835–1912); R. J. Hinton, "Indian Territory" in *Review of Reviews*, XXIII (1901), 451; *Constitution and Laws of the Cherokee Nation* (1875 and 1883); *Constitution and Laws of the Chickasaw Nation* (1899); *Laws of the Choctaw Nation from 1886–1890* (1891 and 1894); *Treaties and Laws of the Osage Nation* (1895); *Acts and Resolutions of the National Council of the Muskogee Nation* (1893–1899); Bureau of Ethnology, *Annual Reports* (1882–1912). JOHN ALLEY.

INDIAN TREATIES

Policy.—For more than three-quarters of a century the Government of the United States conducted its intercourse with the Indian tribes by means of treaties. From the colonies was inherited the habit of dealing with the tribes as independent nations through their chiefs or "kings," and the stilted phraseology of the treaties is in keeping with this fiction. An act of Congress of March 1, 1793, provided that no purchase or grant of land should be valid unless made by a "treaty or convention entered into pursuant of the Constitution," and as the Constitution vests the treaty-making power in the President (Art. II, Sec. ii, ¶ 2) subject

to ratification by the Senate, the practice in the case of Indian tribes became as well settled as in the case of foreign nations.

Besides ratification by the Senate, legislation by Congress was necessary in most instances to carry a treaty into execution. That the incongruity of a sovereign power's negotiating diplomatically, on an even footing, with a subject people, was realized in spite of a general disposition to ignore it, was obvious from the growing impatience of Congress with the hampering provisions in some of the treaties, and from their very liberal interpretation wherever their language was dubious.

Negotiations.—Indeed, an Indian treaty was not easy to construe so as to satisfy both parties, owing to the way such instruments were framed. The negotiations were usually conducted through unlettered interpreters, with limited resources of expression; the English and the Indian tongues were so unlike in structure and in their capacity for communicating shades of meaning, that often it was impossible to make the Indians differentiate between a direct and a contingent statement, for example; their simple environment had left their vocabularies lacking in terms of description familiar enough in a more complex civilization, while the whites were puzzled by certain natural boundaries known from earliest times by the Indians; and the climax of difficulty was capped when a suspicion of venality attached to the interpreter, on whose good faith and patience the essential success of every such enterprise depended. Hence it is reasonable to suppose that more than one historic indictment of the Government for breaches of its covenants to the Indians may have for its real basis nothing worse than mutual misunderstandings between the negotiators.

Treaties Subject to Acts of Congress.—In pursuance of an act of March 3, 1871, treaties with the Indians gave way to mere agreements, and with these Congress felt free to take some rather radical liberties in the laws passed ostensibly to carry them into effect. A crisis was reached when suit was brought in the name of Lone Wolf, a Kiowa Indian of prominence, to enjoin the Secretary of the Interior from disposing of the surplus lands on the Kiowa, Comanche and Apache reservation in Oklahoma without the consent of the Indians. The petitioners asserted that in a treaty of 1868 the Government had promised not to regard as valid any cession of lands except by consent of three-quarters of the male members of the tribes concerned; that the agreement of 1892 under which the Government had undertaken to throw open the reservation had not been signed by the requisite three-fourths; and that even this putative agreement had been violently distorted in the legislation which purported to make it operative. No case could have been made up to present a more striking array of issues wherewith to test the legal force of a treaty regarding Indian land; and when the Supreme Court of the United States, on Jan. 5, 1903, declared that "the power exists [in Congress] to abrogate the provisions of an Indian treaty," and that "its action is conclusive upon the courts," this much-vexed question was settled for all time.

Number of Treaties.—Between 1778 and the adoption of the Constitution, nine treaties with Indian tribes were negotiated, and before the passage of the act prohibiting treaties 372 more. Since the abolition of treaties, less than a hundred agreements have been made. Some of the most recent are very informal in character, and designed chiefly for the information of the Indians as to the intentions of Congress, which now does by direct legislation much of the business which once was assumed to require preliminary negotiation.

Provisions of Treaties.—Apart from land cessions, the subjects oftenest dealt with in the old treaties were the establishment of trust funds, and provisions for the subsistence or education of the Indians concerned. Not a few bound the Government to the support of a tribe till its members were able to support themselves—a vague, and later vexatious, proposition; treaties with the Pawnees pledged the payment to them of $500 annually "for iron and steel and other necessary articles for shops," and the "pay of two blacksmiths, one of whom is to be a tin and gunsmith, and compensation for two strikers or apprentices;" the Pottawatomies had a permanent promise of a supply of salt, and a periodical payment of money in lieu of tobacco, iron and steel; the Six Nations of New York had a permanent annuity of $4,500 in clothing, which, in the case of one prolific branch, recently dwindled to a per capita stipend of a trifle more than 40 cents. Efforts have been made with varying success, to induce the tribes holding these antiquated claims to let them be appraised in cash, capitalized, and the principal paid over, with a view to wiping the matter off the books.

The treaty system has borne almost as serious fruits for evil as the reservation system (*see* INDIAN RESERVATIONS), retarding the advancement of the Indian beneficiaries by keeping them always in a state of unrest, diverting their attention from legitimate measures for self-support, and exposing them to perpetual siege by unscrupulous claim-agents.

See PUBLIC LANDS; TREATIES OF THE UNITED STATES; and under INDIANS.

References: C. T. Kappler (compiler) *Indian Laws and Treaties* (1904); "Handbook of Am. Indians" in Bureau of Am. Ethnology, *Bulletin No. 30* (1910). FRANCIS E. LEUPP.

INDIAN WARS. See WARS OF THE UNITED STATES.

INDIANS, ALLOTMENT OF LAND TO. See ALLOTMENT OF LAND TO INDIANS.

INDIANS, CONSTITUTIONAL AND LEGAL STATUS OF

Original Principles of Colonizing Powers.—The relations of European powers to the inhabitants of America have proceeded upon two different and sometimes conflicting points of view: (1) that the aborigines made up nations similar to the Asiatic nations which were approached about the same time; (2) that they were made up of individuals having no political organization which Europe was bound to regard. The Spaniards looked upon the people of Cuba as individuals and quickly exterminated them; and when they reached the two crude nations of Mexico and Peru, they simply overthrew the governments, and by right of conquest seized the public property and as much of the private property as they thought desirable. Thereafter, they treated the Indians as subjects, made and enforced laws upon them, and accepted them as a kind of inferior citizen. In that status they remained till the formation of the present Latin American states, when such Indians as have adopted the fixed residence and customs of civilization, in many cases became full citizens.

The French in North America adopted a very similar system, destroying some tribes and incorporating others into their body politic. Neither whites nor civilized Indians had a share in the government; and both were subject to the same general system of law.

The English came to North America in comparatively small bodies and found the region occupied by warlike tribes, and from the beginning, they adopted the principle that the unit was the tribe and not the individual, unless the Indian threw off his tribal allegiance and settled down as a white man might do. This is substantially the principle on which the United States bases its relations with the Indians at the present day.

English Theory of Indian Land-Holding.—Under the Spanish system, the Indians were not looked upon as masters of the soil except so far as the Government might recognize individual holdings; under the English system, the land was recognized as the property of the tribe, but as property only in a limited sense. The British claimed all the territory watered by rivers falling into coasts discovered by or otherwise acquired by the English, as the property of the king of England. This idea went back to the old Norman principle that all the land in the kingdom was either occupied directly by the sovereign or was by him granted in fief to certain of his subjects. At the time of colonization, this principle was almost extinct in England, except for the escheats of lands for which no owners or heirs could be found, and which, therefore, went back to the Crown.

In America the principle was revived, and included not only the right to hold or to grant the land, but to authorize grantees to set up local governments, which developed into colonies (*see* COLONIZATION BY GREAT BRITAIN IN AMERICA). The Crown, however, from the beginning recognized that the Indians who were already on the ground had a right of occupancy, which must somehow be extinguished before any grantee could have undisputed possession. This accorded nearly enough with the general Indian principle that the lands were tribal. In some cases, as among the Iroquois, they had agreed upon intertribal boundaries among themselves. So far as the suzerainty of the king of England was concerned, they understood naught of it. To their minds, the whites were simply wandering bands who sought a place of residence; and when they got tired of it would go somewhere else.

Colonial Practice.—The English theory was well maintained during the colonial period. Individuals did sometimes secure grants from Indian tribes; and individuals and communities sometimes got grants from bodies of individual Indians less than tribes; but the recognized principles regulating the legal status of the Indian were as follows: (1) the tribe was entitled to occupy its ordinary range of lands till it made a cession, such cessions often being the fruits of a destructive war; (2) the Indian living with his tribe was not subject to the jurisdiction of the English colonies; (3) members of broken tribes might be received on a fixed area of land within a colony, thus accepting what is substantially the present reservation system. (4) an Indian who had left his tribe, especially a Christian Indian, was subject to colonial law and became a sort of inferior citizen, entitled to the protection of law in life and property.

Individual Indians, particularly members of defeated tribes, could be made slaves, although that status was unknown in England as applied to white persons. The Massachusetts statute of 1641 against slavery expressly excepted "captives in just wars." The children of Indian slaves were also slaves, but the Indians pined and died under the system, and it was of small economic importance (*see* SLAVERY AS A LABOR SYSTEM).

The Federal Government.—Down to the Revolution, the theory of dealing with tribes fitted in with the conditions. The Six Nations in the North and the Cherokees and Creeks in the South were numerous, warlike and well organized, abundantly able to protect themselves and their lands. During the Revolution, the Six Nations were crushed, and twenty-five years later, the Creeks and Cher-

okees succumbed (*see* WARS OF THE UNITED STATES). Early in the Revolution the Continental Congress took the ground that it succeeded to the British Government in direct relation with the Indians; officials were appointed to deal with the Indians; Indian chiefs were received in the hall of Congress; efforts were made to enlist Indian allies; and in 1778 was made the first of a long series of treaties between the United States and Indian tribes. The twin doctrine of tribal unity and of the Indian right of occupancy were completely adopted. Several of the colonies had made treaties with the Indians, some of the states, particularly Georgia, tried to keep up independent relations; but Congress ignored the lack of authority under the Articles of Confederation and assumed a right of control. This control was subsequently affirmed in indefinite terms, by the Federal Constitution. The clauses in that document which bear upon the status of the Indians are as follows: (1) that relating to Representatives and direct taxes, which excludes Indians not taxed (Art. I, Sec. ii, ¶ 3); (2) the authority "to regulate Commerce with the Indian tribes" (Art. I, Sec. viii, ¶ 3); (3) the right "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States (Art. IV, Sec. iii, ¶ 2). These clauses include explicitly only Indian trade, but through the territorial clause and the powers of the United States to make war and to make treaties, full authority over the tribal Indians was successfully asserted for the Federal Government. Indians who had left their tribes, and the fragments of tribes, such as the Senecas in New York, remained under state jurisdiction; otherwise, the status of all individual Indians and of all tribes including tribal Indians within the boundaries of states, remained federal.

Doctrine of Reservations.—The former English principle that the relation of government to the Indians was primarily an affair of the central government, was carried over under the new régime; and the Federal Government maintained that the lands of the tribal Indians within state boundaries were not under the jurisdiction of the state governments, or subject to the operation of state laws.

In most of the then existing states, no numerous tribes were left, except in Georgia, where the Indian question was complicated by the Georgian claims to extend to the Mississippi River (*see* CESSIONS BY THE STATES). When that matter was adjusted in 1802, the Federal Government agreed as soon as possible to bring under state control the tribal lands within the acknowledged limits of Georgia. In the new states as they were admitted this principle of an exclusive jurisdiction of the United States in certain portions of the area of the state was tacitly admitted at the time of entrance into the Union.

Within the territories, the authority of the United States over the Indians was undisputed. By the treaty of Greenville (1795), a demarcation line was drawn across what is now the state of Ohio, separating lands reserved to the Indians from those open to white settlement, a principle earlier stated in the line of the treaty of Fort Stanwix in 1768, and subsequently applied in some cases in the Southwest. As the western country was settled cessions were constantly made by the Indians, till some tribes were left in islands of territory commonly called reservations. Until about 1890 it was the policy of the Government to remove tribes which had thus become surrounded by white settlers to new lands farther west; and in the thirties the Creek and Cherokee reservations in Georgia were, under great pressure, given up by the Indians, who were transferred to a new territory west of Arkansas.

Law and Government.—Upon Indian reservations for many years the only criminal and civil law applying to relations of Indians with Indians was found in the traditions and decisions of the Indians themselves, through their self-constituted tribal machinery. The tribes were kept in order, and the lives and property of white people were safe-guarded by the Indian agents and other Government officials, resident among the Indians with troops in the background. In cases of aggravated crime where the Indians could not act, the agent sometimes held an informal court and declared the penalty. In contests between Indians and unofficial white men, for many years there was no law governing Indian reservations, but in 1834 Congress provided that crimes committed by white men on Indian reservations should be cognizable by the federal courts in a neighboring state or territory.

The so-called Indian Territory had a peculiar system of government; it was sub-divided into reservations, each occupied by one of the "five civilized tribes" or one of the small additional tribes which were brought down from the North. Each of the five civilized tribes had a government modeled on that of the states, with an elected chief and a legislature.

The Supreme Court in the cases of American Insurance Company *vs.* Canter (*see*, 1828, 3 *Pet.* 307); Cherokee Nation *vs.* Georgia (1831, 30 *U. S.* 1), and Worcester *vs.* Georgia (1832, 31 *U. S.* 515), supported the doctrine that the Indian reservations were within the exclusive jurisdiction of the United States, and not subject to state law. The United States Government was also the sole body which could obtain legal title to land by the cessions of Indians. Down to 1871, even if a cession was made after an Indian war, ownership of land was held to be in the Indians till they made a treaty.

Legal Status of the Tribes.—When the status of the Indians under the Federal Constitution was first determined there were still tribes powerful enough to be reckoned as a diplomatic

entity; and the usual means of regulating their status was by formal treaties negotiated under direction of the President and ratified by a two-thirds majority of the Senate. The question whether the tribes were thus recognized as international states capable of entering into treaty obligations binding on both sides, and competent to sue as "foreign states" under the third article of the Constitution, came to a head in the case of Cherokee Nation *vs.* Georgia in 1831. The Supreme Court of the United States then decided that the Indian tribes were not foreign powers, but "domestic dependent nations," which could have no jural relations except with the United States. By subsequent decisions the Court held that the internal government of tribes was subject to revision and alteration by the Federal Government but not by state government (U. S. *vs.* Kagama, 118 *U. S.* 375). Indian agents sometimes deposed a chief or group of chiefs and replaced them with others. Congress, by statute, fixed the conditions of membership in the civilized tribes, and regulated the status of white people who might intermarry with tribal Indians. The tribal governments in the Indian Territory by 1912 were all dissolved and the Indians were brought under the direct operation of the state government of Oklahoma.

Legal Status of Individual Indians.—White people have occasionally sought and obtained formal membership in Indian tribes, as in the case of Samuel Houston in the early thirties; and in some instances were recognized by the Federal Government as full members. In general none but persons of Indian blood are entitled to the privileges, or subject to the restriction, of Indians. Half breeds, whether children of Indian fathers or mothers, are included in the tribes; but no white person can obtain tribal status either by adoption or by marriage with an Indian.

The tribal Indian is part of a unit: he cannot acquire title to any part of the tribal lands, although in the Indian Territory a small number of families for the time being usurped their use. He is bound to obey the tribal laws, so far as they are not disapproved by the Federal Government; he is an equal sharer with all other members of the tribe in the tribal property, which consists of lands and of funds held and administered for the tribe by the Federal Government. He is entitled to a share in the distribution of food or other supplies, when made to his tribe by the Government.

From the beginning of the Federal Government some Indians from time to time have left their tribes and become citizens under the ordinary conditions. The term "Indians not taxed" in the Constitution admits the existence of a class of Indians taxed and presumably citizens. Some states allowed such citizenship without any particular legal process.

The ordinary principle is, however, that a tribal Indian cannot divest himself of that relation, and cannot become a citizen except by federal law. The Zuni Indians were made citizens by the treaty of 1848 annexing New Mexico to the United States, because already citizens of Mexico. By statute of Feb. 8, 1887, Indians who voluntarily left their tribes and took up homesteads thereby became citizens of the state in which they resided. Some efforts were made by tribal Indians to get citizenship by naturalization, but in the cases of Elk *vs.* Wilkins (112 *U. S.* 94) the Supreme Court held that Indians were not included in the naturalization laws of the United States.

The dissolution of the tribes in the Indian Territory included the full citizenship of the Indians thus emerged from the tribal status; and thousands of them became voters in the state of Oklahoma. The policy of the Government during the last two decades has been to induce the Indians to leave the tribes and merge in the normal political population. (*See* INDIAN POLICY OF THE UNITED STATES.)

Nevertheless, the Indian citizen is not quite on the same footing as the white citizen with regard to his land and property. In the provisions for Indians taking up separate tracts of land in individual ownership, there has been a limitation that the land cannot be alienated till twenty-five years has passed, so that their ownership is seriously limited. On the other hand Indians may be entitled to unusual privileges. Thus in 1865 a statute was passed authorizing every half breed among the Indians to enter a claim on the public land wherever he liked. As payment for ceded lands both before and after dissolution of the tribes, large trust funds have been lodged in the hands of the Government, and each Indian is entitled to an annual share of the interest.

Some discriminations have been allowed with regard to the civil status of Indians. Tribal Indians are not included within the guaranties of personal rights embodied in the Federal Constitution, such as jury trial, keeping and bearing arms, and the right of petition. For many years the testimony of Indians was not received in the courts of Georgia, and some other states, in equal weight with that of the white people. The sale of liquor to Indians on the reservations or near the reservations has been forbidden by early acts of Congress (May 6, 1822, July 9, 1832 and June 30, 1834). Indians who are citizens, however, are eligible to public office on the same terms as white men.

See ALIEN; ALLOTMENT OF LAND TO INDIANS; CITIZENSHIP IN THE UNITED STATES; COLONIZATION BY GREAT BRITAIN IN AMERICA; FRONTIER IN AMERICAN DEVELOPMENT; HOMESTEADS ON PUBLIC LANDS; INTERIOR, DEPARTMENT OF; NATURAL RIGHTS; NEGOTIATION OF TREATIES BY THE UNITED STATES; PRIVILEGED STATUS OF PERSONS; PUBLIC LANDS AND PUBLIC LAND POLICY.

References: F. E. Leupp, *Indian and His Problem* (1910); J. McLaughlin, *My Friend*

the Indian (1910); A. B. Hart, *National Ideals Historically Traced* (1907), ch. iv, *Actual Government* (rev. ed., 1908), §§ 164, 165; F. W. Hodges, Ed., *Handbook of Am. Indians* (1907–1910); C. J. Kappler, "Indian Affairs Laws and Treaties" in *Sen. Docs.*, 58 Cong., 2 Sess., No. 319 (1904); C. C. Royce, "Indian Land Cessions" in U. S. Bureau of Am. Ethnology, *Eighteenth Annual Report*, 1889; bibliography in A. B. Hart, *Manual* (1908), § 168.

ALBERT BUSHNELL HART.

INDICTMENT. A written accusation of crime or misdemeanor presented to a court by a grand jury legally convoked and sworn.

H. M. B.

INDIRECT TAXES. See TAXES, INDIRECT.

INDIVIDUALISM, THEORY OF. Individualism as a theory of government considers the state as a necessary evil and advocates the restriction of its functions merely to the maintenance of the peace, order and security of the community. It regards liberty as the chief end of society and considers the interests of the individual to be paramount over those of the group. Individualists condemn state aid to private enterprise in any form; they condemn public education, state supported libraries, museums and similar institutions; they are opposed to sanitary and quarantine laws, and, indeed, all legislation which imposes restrictions upon individual action beyond what is necessary for the maintenance of order, the enforcement of contracts, the punishment of crime and protection against foreign aggression.

Origin and Growth of Individualism.—The individualistic conception of the state grew up during the latter part of the eighteenth century as a protest against the evils of over-government by the paternal governments of Europe. It was one of the cardinal doctrines of the physiocratic school of economists which taught that the economic activities of the people should be freed from the regulation of the state, and that industry should be left alone to be regulated by the natural law of supply and demand. There had been an abundance of legislation in some European states, regulating the price of food and other commodities, fixing the wages of labor, forbidding the export of various commodities, forbidding the manufacture of certain articles except under restrictions, and even legislation prohibiting the wearing of certain kinds of apparel, prescribing the kind of material in which the dead should be buried, etc. Most of this legislation had proved mischievous and destructive of the ends which it was intended to accomplish.

The doctrine of economic liberty received a powerful stimulus from the publication of Adam Smith's *Wealth of Nations* in 1776, a work which contained a strong plea for a policy of non-interference by the state in economic matters. Later the individualistic theories were ably championed by such writers as Cairnes, Ricardo, Malthus, Bastiat, De Tocqueville, Dunnoyer, Léon Say, Willhelm Humboldt, Kant and Fichte and still later by Herbert Spencer, John Stuart Mill, Laboulaye, Leroy-Beaulieu and many others. One of the most elaborate defenses of individualism as a doctrine of government was made by Herbert Spencer in a series of essays published under the title *Social Statics and Man Versus the State*, a work which did more perhaps to popularize the *laissez faire* (*see*) theories then any other contribution to the subject. He maintained that government was essentially immoral, that it existed merely because crime existed and that it had no other *raison d' être* than to punish wrong and protect the individual against the fraud and violence of his fellows. To administer justice, to mount guard over men's rights, summed up, in his mind, the proper functions of the state and when it went further than this it not only worked injury to society but defeated its own ends.

The doctrine of individualism has always had a very wide influence in America. It was a natural product of frontier conditions of life; the philosophical statement of individualism was but the expression of a fact which life in a new country with boundless opportunity had produced. Jefferson in his protest against an expansive and burdensome government was one of the great exponents of the individualistic doctrine. In his first inaugural he stated the doctrine clearly: "Still one thing more, fellow citizens—a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned" (Richardson, *Messages and Papers of the Presidents*, I, 323).

Arguments for and against Individualism.—In defense of the individualistic conception, it has been argued that justice requires that the individual shall be left by the state to work out his own destiny, that restrictions upon his liberty tend to destroy his power of initiative and self-reliance, and that over-government weakens individual character and interferes with the natural and healthy development of man. Freedom, says Mill, strengthens individual character and conduces to human progress: "A people among whom there is no spontaneous action for a collective interest, who look habitually to their government to command and prompt them in matters of joint concern—who expect to have everything done for them except what can be made an affair of mere habit and routine—have their faculties only half developed; their education is defective in one of its most important branches." Finally, it is argued, that the policy of non-interference rests

upon sound economic principles. State intervention hampers enterprise and interferes with the natural development of trade whereas unrestricted competition tends toward the largest production of wealth, operates to keep wages and prices at a normal level and leads to the production of better commodities than can be obtained under a policy of paternalism.

The individualistic doctrine is criticised, first of all, because it assumes that the state is an evil—an assumption that has not been borne out by the experience of mankind. It is no argument to say that because the state has sometimes committed errors in the past or that its powers have been abused in particular cases it is an evil and should not be trusted in the future. In the second place, the assumption of the individualists that all restraint is necessarily an evil cannot be accepted. Character is developed quite as much through restraint as through freedom. It is a very narrow view which sees in a factory act, a pure food law, or a guarantine law nothing but an infringement upon individual liberty. It would be very easy to show that wisely directed state action increases individual capacity and enlarges the horizon of individual liberty by removing obstacles interposed by the strong and self-seeking. Finally, the *laissez faire* theorists greatly exaggerate the importance of the individual at the expense of the community. They treat him as if he were paramount—a thing apart from the society of which he is a member, with interests separate and distinct from those of his fellow men. But in reality, he is, when viewed apart from his surroundings, as Professor Ritchie has well remarked "a mere abstraction, a logical ghost, a metaphysical specter, a mere negation." No modern state in practice acts upon the individualistic theory of politics, all now proceed on the theory that it is their duty to prevent as well as redress crimes, and to promote the common welfare in a thousand ways, by regulation, restriction, and direct aid.

See COLLECTIVISM; DEMOCRACY; POLITICAL THEORIES OF ENGLISH PUBLICISTS; POLITICAL THEORIES OF MODERN CONTINENTAL PUBLICISTS.

References: W. Donisthorpe, *Individualism, a System of Politics* (1889); P. Leroy-Beaulieu, *The Modern State in Relation to Society and the Individual* (1891); T. Mackay, *A Plea for Liberty* (1891); W. S. McKechnie, *The State and the Individual* (1896); J. S. Mill, *Essay on Liberty* (1867); F. C. Montague, *Limits of Individual Liberty* (1884); D. G. Ritchie, *Principles of State Interference* (1902); B. Smith, *Liberty and Liberalism* (1887); H. Spencer, *Social Statics and Man versus the State* (1903). JAMES W. GARNER.

INDUSTRIAL COMMISSION. Under date of June 18, 1898, an act was approved by the President of the United States authorizing the appointment of a non-partisan commission "to investigate questions pertaining to immigration, to labor, to agriculture, to manufacturing and to business, and to report to Congress and to suggest such legislation as it may deem best upon these subjects . . . and suggest such laws as may be made a basis for uniform legislation by the various States of the Union, in order to harmonize conflicting interests and to be equitable to the laborer, the employer, the producer and the consumer." This comprehensive program was entrusted to a commission composed of: five members of the Senate, appointed by the presiding officer thereof—James H. Kyle, chairman, Boies Penrose, J. J. Gardner, Wm. Lorimer, L. F. Livingston; five members of the House of Representatives, appointed by the Speaker—John C. Bell, Theodore Otjen, Lee Mantle, A. L. Harris, Ellison A. Smyth; nine persons appointed by the President, among them—John M. Farquhar, Eugene D. Conger, Thomas W. Phillips, C. J. Harris, M. D. Ratchford, John L. Kennedy, Albert Clark. Its term was for two years—afterwards extended to February 15, 1902.

The work of the Commission was done largely through hearings and oral testimony, the records of which take up four-fifths of the space of its reports. As time went on more use was made of experts to investigate particular topics; up to that time, no commission in the United States had ever made so much use of trained investigators.

The nineteen volumes constituting the report of the commission are a storehouse of valuable information on the subjects covered. On many points they still remain our best source material. The titles of the volumes are as follows: 1, Trusts and Industrial Combinations; 2, Trust and Corporation Laws; 3, Prison Labor; 4, Transportation; 5, Labor Legislation; 6, Distribution of Farm Products; 7, Capital and Labor in Manufactures and General Business; 8, Chicago Labor Disputes; 9, Transportation (second volume); 10, Agriculture and Agricultural Labor; 11, Agriculture and Taxation; 12, Capital and Labor in the Mining Industry; 13, Trusts and Industrial Combinations (second volume); 14, Capital and Labor in Manufactures and General Business (second volume); 15, Immigration and Education; 16, Foreign Labor Legislation; 17, Labor Organizations, Labor Disputes, and Arbitration, Railway Labor; 18, Industrial Combinations in Europe; 19, Final Report. Each volume of testimony has a full "digest" and a shorter "review" of evidence as well as an elaborate index to the full testimony and another index to the "digest" and "review." Volume 19, the Final Report, takes up the various divisions of the work of the Commission, gives a full review of the data and a short series of definite recommendations. In addition, this volume

has a general index to all the "digests," "reviews," and special reports and investigations.

The Commission did not draft a complete industrial code and presented bills only on Immigration and Convict Labor. Its great service was that of investigation. The specific recommendations it made, while on the whole sane and vigorous, and of far higher type than those of most investigations in the United States, have been of secondary importance.

See COMMISSIONS IN AMERICAN GOVERNMENT; CORPORATIONS, POLITICAL AND LEGAL PROBLEMS OF; LABOR, RELATION OF THE STATE TO; MONOPOLIES; SOCIAL REFORM PROBLEMS; STATISTICS, OFFICIAL COLLECTION OF; TRANSPORTATION, REGULATION OF; TRUSTS.

References: E. D. Durand, "Methods of Government Investigation" in *Quart. Jour. Econ.*, XVI (1901–02), 564–86; W. Z. Ripley, "The Work of Trained Economists in the Industrial Commission" in *ibid*, 121–2; S. N. D. North, "The Industrial Commission" in *No. Am. Rev.*, CLXVIII (1899), 708–19; Industrial Commission, *Reports* (1900–1902).

L. C. MARSHALL.

INDUSTRIAL CONGRESS. This convention met in Philadelphia June 13, 1848, and nominated Gerritt Smith for President and William S. Waitt for Vice-President. A. C. McL.

INDUSTRIAL EDUCATION. See EDUCATION, INDUSTRIAL.

INDUSTRIAL INJURIES. Injuries may be classified as avoidable and unavoidable. Avoidable injuries are due to carelessness of the employer, the victim, or a fellow-employee, while unavoidable injuries, or accidents, constitute the occupational risk. The chief preventable conditions from which industrial injuries result are: (1) lack of provision of safety in construction; (2) long hours of work; (3) too great speed maintained; (4) inadequate factory inspection; (5) failure to remedy known defects; (6) inadequate warning and signal systems; (7) inadequate instruction and direction of ignorant workers. In different states the field of danger in factory work has been very differently measured, although any one of the dangers recognized by a specific safety provision in one manufacturing state must exist in any other manufacturing state. The tendency of such legislation has been rather toward the simple repetition of early statutes and not toward progressive development. The Wisconsin act of 1911, providing for an agency for administrative legislation as to details in safety provisions, similar to the systems in many foreign countries, is unquestionably the most advanced safety law at the present time. This act established a quick and effective means for keeping pace with changing industrial conditions, thus relieving the legislature from making endless details respecting safety provisions. The success of this law led Massachusetts and New York, in 1913, to enact laws providing for similar tribunals.

The recent wide-spread movement for reform in dealing with the problem of industrial injuries has resulted in the enactment of laws in many of the states of the Union for the purpose of prevention of work-accidents and diseases and the securing of reliable information concerning their nature and extent.

In the face of the unremitting pressure for large output, the motive for prevention of accidents can never be compelling, until to each injury and death is fixed a uniform and unescapable penalty. If accidents became a heavy and determinable cost to the business, the prevention of them would become of direct economic interest to the employer. Safe but slower ways of producing may involve a reduction in profits; but the welfare of the community demands that the human waste resulting from dangerous, quicker ways shall be compensated for by a greater reduction in profits. Otherwise the employer, held closely in the grip of economic motives, must make production, rather than the protection of workmen, his first interest.

See ACCIDENTS, RAILROAD AND STEAMSHIP; ARBITRATION OF LABOR DISPUTES; EMPLOYERS' LIABILITY; FACTORY LEGISLATION; LABOR BUREAU; LABOR, PROTECTION TO; LABOR, RELATION OF THE STATE TO; OCCUPATIONAL DISEASES; UNEMPLOYMENT.

References: C. Eastman, *Work-Accidents and the Law* (1910); *Am. Labor Legislation Rev.* I (1911), No. 2, 103–109, 123–134, No. 3, 7–58; D. D. Lescohier, "Industrial Accidents and Employers' Liability in Minnesota" in Minnesota Bureau of Labor, *12 Bicannial Report* (1910), 125–324; "Causes and Prevention of Industrial Accidents" in N. Y. State Commission on Employers' Liability, *Second Report* (1911); "Prevention and Reporting of Industrial Injuries" in *Am. Labor Legislation Rev.*, I. No. 4, Oct., 1912, 425–444; F. C. Schwedtman and J. A. Emery, *Accident, Prevention and Relief* (1911); G. L. Campbell, *Industrial Accidents and Their Compensation* (1911); Law and Newell, *Prevention of Industrial Accidents* (1909); F. L. Hoffman, "Fatal Accidents in Coal Mining and Industrial Labor" in U. S. Bureau of Labor, *Bulletin No. 78* (1908), 417–465; N. Y. Factory Investigating Com'n, *Preliminary Report*, 1912.

CHARLES F. GETTEMY.

INDUSTRIAL INSURANCE. See INSURANCE, INDUSTRIAL.

INDUSTRIAL SCHOOLS. See SCHOOLS, INDUSTRIAL.

INEBRIATE ASYLUMS. About the year 1880 began a popular wave of interest in public asylums or hospitals for the treatment of in-

ebriates. The medical profession is inclined to regard inebriety as a disease rather than a crime, and the efforts to reform an inebriate by short sentence houses of correction has been a failure.

Several state institutions for inebriates have been established, of which one of the most efficient is the Massachusetts State Hospital at Foxborough, at which both inebriates and insane patients are kept. The stay is voluntary on the part of the patient. The inebriate may leave at his option, by giving five days' notice.

No specific treatment is used. The patient receives such medical treatment as is necessary to put him in good physical condition. Reliance is placed on prescribed diet, out door air, exercise, congenial employment, wholesome recreation and cheerful society. Three months is considered a minimum time for treatment in a majority of cases of inebriety, and forty per cent of the patients are believed to make a good recovery.

See DEFECTIVE CLASSES, PUBLIC CARE OF; DRUNKENNESS, REGULATION OF; LIQUOR LEGISLATION.

References: *Am. Year Book 1911*, and year by year; Massachusetts State Hospital for Inebriates, *Annual Reports* (1908 to date); B. B. Burrett, *Legal Treatment of Drunkenness* (1910); N. Y. State Charities Aid Assn., *Alcoholic Repeater or Chronic Drunkard* (1910), *Treatment of Public Intoxication and Inebriety* (1909); Committee of Fifty, *Physiological Aspects of Liquor Problem* (1903); T. N. Kelynack, Comp., *Drink Problem in its Medico-Sociological Aspects* (1907); British Departmental Committee on the Inebriates' Acts, *Report* (Cd. 4438), (1908, Cd. 4439); J. Ford, "Drunkenness in Massachusetts; Conditions and Remedies" in Special *Report to Foxbough State Hospital*, 1910.

HASTINGS H. HART.

INFAMOUS CRIME. The Constitution of the United States provides that "No person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger" (Twelfth Amendment). The words, infamous crime, are not entirely free from ambiguity but perhaps it may be safe to say any crime, not commonly classed as a misdemeanor, is infamous. Judge Cooley says (*Principles of Const. Law*, 3d ed., 318) that probably the punishment was in view as the badge of infamy rather than any element in the offense itself. Punishment by imprisonment in the penitentiary would be infamous. See GRAND JURY; TWELFTH AMENDMENT. References: *Ex Parte* Wilson, 114 *U. S.* 417; Mackin *vs.* United States, 117 *U. S.* 348.

A. C. McL.

INFANT INDUSTRY. This term is applied to the need of protecting new industries in order to give them opportunity to compete with older foreign establishments which have enjoyed the advantages of experience and stable markets. This argument was especially emphasized in the early period of tariff discussion. Its validity has been recognized by economists who dissent from the protectionist reasoning as a whole, as, for example, by John Stuart Mill. In more recent years the argument has been discredited by tariff reformers, on the ground that protected industries never appear to grow to maturity, but remain infants for an indefinite period. See AMERICAN SYSTEM; TARIFF POLICY OF THE UNITED STATES; TARIFF REFORM. Reference: F. W. Taussig, *Tariff Hist. of the U. S.* (5th ed., 1910), chs. i, vi.

D. R. D.

INFERIOR OFFICERS. The United States Constitution provides (Art. II, Sec. ii, ¶ 2) that "Congress may by law vest the appointment of such inferior officers, as they may think proper, in the President alone, in the courts of law, or in the heads of departments." Just what federal officers may be termed "inferior" has never been squarely determined by the courts, the occasion for this determination never having arisen. It may be said, however, that heads of the great departments, chiefs of bureaus, divisions and commissions, and possibly the higher administrative officials stationed at various places throughout the country, as well as the post-masters in the larger cities, would be construed to be not inferior officers. Congress, when vesting the appointment of inferior officers in the heads of departments, may limit and restrict the power of removing them (United States *vs.* Perkins, 116 *U. S.* 483). See APPOINTMENTS TO OFFICE; EMPLOYEES OF GOVERNMENT; EXECUTIVE DEPARTMENTS; PRESIDENT, AUTHORITY AND INFLUENCE OF; PUBLIC OFFICERS, CLASSIFICATION OF; and under CIVIL SERVICE. Reference: D. K. Watson, *Constitution of United States* (1910), II, 973.

W. W. W.

INFLATION. This term is applied to an excessive issue of paper money, either of bank or Government Treasury notes. Generally it refers to the latter. It came into special use in the United States during the greenback controversy of the seventies, when the advocates of further issues of greenbacks were called inflationists. The bill of 1874, passed by Congress but vetoed by President Grant, providing for an increase in the volume of Treasury notes, was referred to in current discussion as the Inflation Bill. See GREENBACKS; LEGAL TENDER CONTROVERSY; PAPER MONEY IN THE UNITED STATES. References: E. C. Mason, *Veto Power* (1891), 80–81; D. R. Dewey, *Financial History of the United States* (1903), 361.

D. R. D.

INFLUENCE IN GOVERNMENT

Meaning of the Term.—The theory of all governments, monarchical or democratic, is that they are expressions of sovereign will. Either the king alone or the king in conference with representatives of the people, or the people through their representatives, make those decisions which express the will of the state. In reality every government is subject to deflections of the public will through personal influence. The court favorite or the commercial magnate may substitute his will for that of the nominal ruler. In American government, notwithstanding its strong democracy, influence is both in proper and in demoralizing ways constantly at work. A President is affected and sometimes restrained by the opinions of his Cabinet. Congress and the state legislatures pay some respect to the statements of the heads of departments on the public service. Judges influence legislation by their construction of previous laws, and by their presumed future opinions as to pending measures which may come before them. The great doctrine of checks and balances (*see*) is to a considerable degree nothing more than a system of influence exerted by men in one part of the government over men in another.

"Influence" is, however, popularly used to mean a force outside the actual personnel of government service. "Who is your influence" used to be a common question in the federal civil service; the "influence" being the politician who had got the appointment for a public servant, and perhaps consented to be his political guardian angel. In most cases the strongest power of this kind is the "party" (*see*) by which is really meant those persons within a party who are accustomed to lead and to make nominations. Party influence works upon public officers to make them obey decisions reached by the party organization, on penalty either of losing future nominations or of being held up to the public as a discordant element. Inasmuch as parties in general pay very little attention to their public platforms, or preëlection pledges, "influence" may be used to compel a public official to turn his back on his own public promises.

Influence of Executive Heads.—The machinery of influence can, however, be turned the other way. In the last decade executive officials have been much in the public eye. Hence Presidents, governors, and prosecuting officers —such as attorneys general, and local public attorneys—have discovered that if they defy party influence, an appeal over the heads of party leaders to the voters is frequently a safe and popular thing. The influence in this case goes from the official to the body of voters, and is by them returned upon legislators or party leaders, to compel them to accept unwelcome measures.

Influence of Business.—A powerful pressure is constantly brought to bear upon all parts of American government by the business interests, which possess a considerable part of the property of the country and have a rational desire to protect themselves. They act through two powerful instrumentalities. (1) The organizations of lines of business, often meeting in annual conventions, where people get acquainted, discuss their common affairs and sometimes prepare appeals to Congress or the legislatures. Some large lines, such as the building trades, are organized by cities; others, such as the hardware manufacturers and bankers, have national associations. (2) Chambers of commerce, which in many cities have become unofficial parts of the municipal government, by general votes, or through civic secretaries, often appeal to the city government for improvements or for economies, frequently with great effect. Inasmuch as mayors, governors and the President have vetoes, legislation can often be checked by proper appeals to the executive; and immense pressure is often brought to bear by interested individuals, organizations or business bodies to secure a veto, or the threat of a veto.

Influence of Favors.—Executive officials also are subject, along with members of the legislatures and city councils, to adroit and powerful influence in making appointments. Personal friendship and the desire to please play their part; and American government is honeycombed with the practice of building up one's political fortunes by putting a multitude of people under obligations. Some of the past masters of Pennsylvania politics have been renowned for their skill in granting favors, for which they expected the political support of the people aided.

Influence of Corporations.—The direct interference of powerful corporations has been one of the strongest influences in American government. In several states, notably New Jersey and California, the railroads for years dominated politics by their influence on nominations to legislatures, the governorship and even judgships, in which they aided themselves by a liberal distribution of passes and of designations of counsel. The traction corporations have in many cities seen to it that no man was elected to an important office who was opposed to their plans. It is not uncommon for members of legislature to be "owned" by some public man or financial magnate, perhaps of the opposite party.

Corrupt Influence.—This is felt in all governments and has at times been very powerful

in the United States. It acts through bribes, direct and indirect, to voters and to legislators, and through securing favorable contracts or valuable franchises. Heads of governments are usually free from the most corrupt forms of money influence; but not always free from the taint of political advantage through the use of other people's money.

Religious and Philanthropic Influence.—Religious bodies have had considerable influence in government. The Mormon church for a long time controlled and still much influences the government of Utah and probably of some neighboring states. In general the influence of the religious bodies is exercised through resolutions of their officials, and through the known wishes of the members of large denominations as expressed through their lay and clerical leaders and press. The public observance of Sunday is a striking example of the continued power and influence of the churches.

Learned and scientific societies also affect government, principally by memorials or remonstrances upon pending measures; historical societies ask for the protection of records and historical monuments; scientific societies ask for an organization of their special interest under government. Thus the American Medical Association has been active in attempting to establish a national department of health.

Boss Influence.—The most striking example of influence in American government is that of the political boss (*see*) in the city and state. In various states particularly New York, Pennsylvania, Ohio, Indiana and Illinois, persons, sometimes unofficial, sometimes in public office, possess a power of suggestion which compels most of the members of their party to vote as directed for speakers and presidents of senates, and for particular measures. Governors of states frequently take no serious action contrary to the will of some private individual. This is influence raised to the nth power, and the weight of its authority rests upon the conviction both of the outside public and the members of state or city government that "what the boss says goes"—that in fact the government of the state is one wholly of influence. In such a case, most people who wish things done bring their batteries to bear, not upon the governor and legislatures, who do not really exercise power, but upon the influence behind the scenes.

Washington once wrote, "Influence is not government": influence, acting in the midst of the complex of converging forces called government is more powerful than the people in office, sometimes is stronger than the voters acting at the polls. The best and most genuinely representative government is, therefore, that in which the determining influences are open, above board, and (so far as may be) coincide with the persons who exercise official power. People are justly suspicious of an influence which is not limited by the responsibilities of government.

See Absolutism; Boss and Boss System; Bribery; Cabinet Government; Committees, Party; Convention, Political; Corruption; Government, Theory of; Independent Movements in Politics; Individualism, Theory of; Lobby; Local Self-Government; Organization; Party Leadership; Patronage; Popular Government; Public Opinion and Popular Control; Tammany.

References: J. Bryce, *Am. Commonwealth*, (4th ed. 1910), I, chs. xliv, li, II, chs. iv, v; A. B. Hart, *National Ideals Historically Traced* (1907), chs. ix, xiii.

Albert Bushnell Hart.

INFORMATION. A written accusation against a person of crime or misdemeanor, similar in form and substance to an indictment, but presented to the court by a state attorney or other authorized public officer, instead of by a grand jury. **Reference:** Wm. Blackstone, *Commentaries*, T. M. Cooley, Ed. (1899), IV, 308. H. M. B.

INFORMATION, CALLS FOR. The framers of our first constitutions had definite theories as to the separation and independence of the several departments of government, and such theories were set forth at length in the constitutions which they drew up. But in practice the several departments of government are not and cannot be independent of each other. The legislature passes laws which are enforced by the executive and makes appropriations which are expended by the executive. In the amendment of existing laws and in the passage of new laws the legislature needs the advice and assistance of the executive, and such assistance is ordinarily given freely. Printed reports and recommendations by executive officers, and recommendations made by the governors or President to the state or national legislative bodies respectively furnish to these bodies much of the information which they desire. But legislative bodies have independent power to make investigations concerning any matters upon which they may consider it proper to legislate, and concerning impeachment charges which they may think proper to bring.

If information is in the hands of the executive which the legislative bodies think may be of assistance to them, it is not uncommon for legislative bodies to request that such information be transmitted to them, and this request is ordinarily complied with as a matter of course. But some cases of conflict have arisen in the Federal Government when the President of the United States, upon request from either the House or the Senate, has declined to furnish the desired information or has refused to permit a member of his Cabinet to furnish such information. Calls for information addressed to the President by either house of Congress have ordinarily been styled "requests," and have, where they concerned foreign relations,

contained the phrase "if not, in his judgment, incompatible with the public interest." But calls for information addressed to executive officers inferior to the President have frequently "directed" that the information be furnished.

If the President declines to furnish the information requested or instructs a member of his Cabinet to decline to do so, there is of course no way by which Congress or either house may enforce its demands. But unless the demand is unreasonable, the executive will ordinarily comply with it, in order to preserve cordial relations between the two departments, although in a number of cases conflict has arisen out of the refusal to furnish information. President Washington, in 1796, declined to furnish the House with correspondence relating to the Jay Treaty. Among the most serious conflicts of this character were those between President Tyler and the House of Representatives in 1842, as a result of which the House passed resolutions insisting upon its right to demand information in the possession of the executive relating to subjects properly under consideration in the House. In 1886 the Attorney General, under instructions from President Cleveland, declined to furnish documents and information requested by the Senate in relation to the removal of a United States district attorney in Alabama, the Senate claiming that such information was necessary in considering the question of confirming the appointment of the successor of the removed officer. As a result of this refusal a serious conflict arose between the President and the Senate, and after lengthy consideration the Senate passed a resolution condemning the action of the Attorney General. But the information was not furnished and the President's appointee was finally confirmed.

See Executive Departments; President, Authority and Influence of; President of United States, Constitutional Powers of.

References: A. C. Hinds, *Precedents of the House of Representatives* (1907), II, 982–985, 986–988, 1026–1027, III, 179–199; E. C. Mason, "Congressional Demands upon the Executive for Information" in Am. Hist. Assoc., *Papers* (1891), V, 365–375; G. Cleveland, *Presidential Problems* (1904), 39–69; P. S. Reinsch, *Readings on Federal Government* (1909), 67.

W. F. Dodd.

INHERITANCE TAX. See Tax, Inheritance.

INITIATIVE. The initiative and the optional referendum have recently been introduced into several of the United States, in conscious imitation of similar institutions long in operation in Switzerland. Theoretical reasons were adduced in their favor, but the strength of the movement for their adoption came from the feeling, widely prevalent in the opening years of the twentieth century, that state legislatures were no longer representative of the people, but were under the dominance of political rings and the moneyed interests.

The initiative was first introduced in South Dakota (*see*) in 1898, but its principal use has been in Oregon (*see*), where, in 1902, an amendment to the constitution provided that a measure proposed by a petition, duly signed by voters equal to eight per cent of the number voting for justice of the supreme court at the last preceding regular election, and filed with the secretary of state four months before a general election, should be submitted to the voters, to become a law if a majority of those voting upon the measure were in its favor. By the end of 1912 the initiative in similar form had been introduced in 17 states. Except in Oregon the initiative has been sparingly employed, and the measures thus placed before the people have usually been rejected. In Oregon, on the other hand, between 1902 and the end of 1912, 76 measures, including many constitutional amendments, have been submitted by initiative petition, and 33 of them have been adopted. A general direct primaries law, a stringent corrupt practices act (*see*), a workmen's compensation act (*see* Employers' Liability) and others of vast importance have been thus put before the people and enacted. The exceptional effectiveness of the initiative in Oregon is largely due to the logical and painstaking means which that state has taken to interest and inform the voters as to the measures which are to appear upon the ballot.

See Legislation, Direct; Referendum. References: C. L. Jones, *Readings on Parties and Elections* (1912), ch. x; C. A. Beard, and B. E. Shultz, *Docs. on Initiative, Referendum and Recall* (1912); E. P. Oberholtzer, *Initiative, Referendum and Recall in America* (1912); N. M. Butler, *Why Should We Change our Form of Gov.* (1912); W. B. Munro, Ed., *Initiative and Referendum* (1912); G. H. Haynes, "People's Rule in Oregon, 1910" in *Pol. Sci. Quar.*, XXVI (1911), 32–62; "People's Rule on Trial" in *Pol. Sci. Quar.*, XXVIII (1913), 18–33; *Am. Year Book, 1910*, 152–155, 238.

G. H. H.

INJUNCTION. The origin of the writ of injunction is probably the express mandate of the king, absolute, under Norman ideas the fountain of justice, who both declared the law and created the courts. As early as Henry I (1100) the King, through his chancellor, issued a perfectly modern writ enjoining certain persons from fishing in certain parts of the Thames, and by this time the chancellor's office had grown, doubtless for this reason, to be the highest secular office in the kingdom. The intention of the Norman kings was doubtless to make the chancery law and the court of chancery superior to the general justiciary and the common law courts; an fort resisted

steadily for centuries by Parliament, as shown in many statutes limiting or restricting the jurisdiction of courts of chancery. This effort was only partly successful, for the "common" injunction so called, was the injunction against a suit at common law, and this jurisdiction has persisted to the present time. Indeed, the only other office of a writ of injunction until recent times was for specific performance of contracts or covenants where the common law afforded no remedy, or to restrain acts of nuisance, waste or trespass where the common law remedy of damages was not adequate because the injury, if done, would be irreparable; or in matters complicated, such as taking accounts; or when a multitude of parties were concerned, as in bills of peace; or in cases of fraud or moral wrong not justiciable by the common law. Rarely, except in cases of specific performance of contract, was the writ used affirmatively, that is to say, to cause something to be done rather than not to be done—what we now entitle a mandatory injunction—and even when used negatively it was a "prerogative" writ: that is to say, a rule or order emanating from the prerogative of the Crown.

In the United States the Federal Constitution (Art. III Sec. ii) expresses that the judicial power should extend to cases of equity as well as law: by the first judicature act this was expressed to be the measure of equity as it existed at that time (Lord Eldon's) in England, whereby our federal chancery system seems fixed for all time, unless the Constitution be amended. To regulate the writ of injunction by act of Congress, or even punishment for contempt is probably impossible (*see* GOVERNMENT BY INJUNCTION). Our doctrine of separation of powers (*see*) prevents a President from pardoning a person found guilty of a contempt of a federal court, the offense not being one "against the United States." The states, however, accepted equity courts slowly and with some jealousy. In Massachusetts, for instance only very recently have general equity powers been extended, and the equity courts themselves are the creatures of statute. The court itself might, therefore, be abolished by the legislature. Nevertheless it is doubtful whether, when the court exists, its power to punish contempt of its own injunction may be, under the state constitutions, limited as was attempted by a statute of 1911.

In most of the southern and western states, particularly where law and equity have been fused, the vast powers of the injunction writ are vested in any judge, even one of a minor court, and it is believed that the abuses have largely resulted from this fact. Injunctions, or at least a restraining order, are usually awarded *ex parte* and without notice, and punishment for their violation inflicted by the judge who grants them, without hearing or witnesses for the defense, and of course without jury trial. In New York City the matter became a scandal a generation ago; not only could an injunction be obtained at any hour from a friendly judge for or against anything upon a simple affidavit, but any other judge, possibly friendly to the other side, would quickly dissolve the injunction upon the asking. A reform now urged is that no injunction should issue without notice and hearing; another suggestion is that trials for contempt should be before some other judge than the one issuing the injunction. It may further be added that all judges having equity power should be much more careful in issuing affirmative injunctions than negative ones, particularly when they result in the order to anyone to perform a personal contract or to abstain from the exercise of a constitutional right. **See** EQUITY; GOVERNMENT BY INJUNCTION. **Reference:** J. L. High, *A Treatise on the Law of Injunctions* (4th ed., 1904).

FREDERIC J. STIMSON.

INJUNCTION IN LABOR DISPUTES. This subject was a matter of considerable discussion for a number of years; and was especially discussed in the presidential campaign of 1908 and for some time thereafter. The Republican platform of that year declared:

> The Republican party will uphold at all times the authority and integrity of the courts, State and Federal, and will ever insist that their powers to enforce their process and to protect life, liberty and property shall be preserved inviolate. We believe, however, that the rules of procedure in the Federal courts with respect to the issuance of the writ of injunction should be more accurately defined by statute, and that no injunction or temporary restraining order should be issued without notice, except where irreparable injury would result from delay, in which case a speedy hearing thereafter should be granted.

The Democratic convention of the same year also contained a series of resolutions referring to the matter of punishment for contempt. They demand that trial by jury be provided for in cases of indirect contempt in federal courts. President Taft called the attention of Congress to this subject in his message of December, 1909. He said:

> The ends of justice will best be met and the chief cause of complaint against ill-considered injunctions without notice will be removed by the enactment of a statute forbidding hereafter the issuing of any injunction or restraining order, whether temporary or permanent, by any federal court without previous notice and a reasonable opportunity to be heard on behalf of the parties to be enjoined; unless it shall appear to the satisfaction of the court that the delay necessary to give such notice and hearing would result in irreparable injury to the complainant and unless also the courts shall from the evidence make a written finding, which shall be spread upon the court minutes, that immediate and irreparable injury is likely to ensue to the complainant, and shall define the injury, state why it is irreparable, and shall also endorse on the order issued the date and the hour of the issuance of the order.

In an address on "Labor and Capital" delivered before the Cooper Institute in New York on January 10, 1908, Mr. Taft also discussed this subject at considerable length. After referring to the fact that there was an

alleged abuse of the writ of issuing injunctions, he said:

> I think it has grown chiefly from the practice of issuing injunctions *ex parte;* that is, without giving notice or hearing to the defendant. The injustice that is worked is in this wise: Men leave employment on a strike, intending to conduct themselves peaceably and within the law. The counsel for the employer visits a judge, presents an affidavit in which an averment is made that violence is threatened, injury to property and injury to business. And accordingly on this affidavit the judge issues a temporary restraining order *ex parte* against the defendants who are named in the petition or bill. The broadest expressions are used in the writ—frequently too broad. The defendants are workingmen, not lawyers. They are not used to processes of the court. The expressions of the writ are formidable. A doubt arises in their minds as to the legality of what they are about to do. The stiffening is taken out of the strike, the men drop back and the strike is over, and all before they have had a chance in court to demonstrate, as they might, that they had no intention of doing anything unlawful or doing any violence.

Mr. Taft advocated a law which should provide that no temporary restraining order should issue until after notice and hearing; and also said that in his opinion there should be a provision allowing the defendant in contempt proceedings to challenge the judge issuing the injunction and to call for the designation of another judge to hear the issue. He objected, however, to the trial of contempt by jury.

As indicating the tendency to prevent summary punishment for contempt the following clause from the constitution of Oklahoma is of interest:

> The legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt: Provided, That any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or entered by any court or judge of the State shall, before penalty or punishment is imposed, be entitled to a trial as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given.

In 1912 the Supreme Court of the United States promulgated, as a part of a general revision of the rules governing equity practice in Federal Courts, in effect Feb. 1, 1913, the following order on the subject of injunctions which embodies, for Federal practice, the reforms generally advocated:

> No preliminary injunction shall be granted without notice to the opposite party, nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice.
>
> In case a temporary restraining order shall be granted without notice in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order, and shall take precedence of all matters, except older matters of the same character.
>
> When the matter comes up for hearing, the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve his temporary restraining order.
>
> Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution and modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be forthwith filed in the clerk's office.

See GOVERNMENT BY INJUNCTION; INJUNCTION.

References: *In Re* Debs, 158 *U. S.* 564; G. G. Groat, "Injunctions in Labor Disputes" in *Pol. Sci. Quart.*, 1908; W. H. Taft, *Presidential Addresses and State Papers* (1910), 142–163, 191–200, 477–478, *Present Day Problems* (1908), 241–272.

ANDREW C. MCLAUGHLIN.

INJURIES, INDUSTRIAL. See INDUSTRIAL INJURIES.

INLAND WATERWAYS COMMISSION. President Roosevelt, March 14, 1907, appointed an Inland Waterways Commission to "prepare and report a comprehensive plan for the improvement and control of the river systems of the United States." It was an executive commission created by the President without authority of, or appropriation by, Congress. A preliminary report was submitted to the President, February 3, 1908.

This report sets forth the findings of the commission under twenty-four headings, including the cause of the decline in the use of inland waterways; the measures necessary to be adopted to make the waterways more useful; and the necessity of coördinating all measures for the conservation and use of our water resources. The commission recommended that Congress be requested to authorize the appointment of a National Waterways Commission whose purpose should be to coördinate the work of the different departments of the Federal Government concerned with waterways and their use, and, after further investigation, to recommend plans for developing inland waterways and utilizing the waters in such manner as to secure an equitable distribution of costs and benefits among the states, municipalities and private beneficiaries.

The commission requested President Roosevelt to call a conference, consisting of the governors of the states and territories, of a limited number of delegates appointed by each governor, and of representatives from leading national organizations, to consider the general subject of conservation of natural resources as well as the larger use of waters. The conference met upon the invitation of the President, May 13, 14, 15, 1908, in the White House. It was attended by the governors of forty states, and among the other guests invited by the President were the members of the Supreme Court, of both houses of Congress and of the Cabinet.

Immediately following this conference, the President appointed a National Conservation Commission of which the Inland Waterways Commission became a part. The Conservation

Commission held a conference in December, 1908, and submitted a report to the President, in February, 1909. Like its predecessor, the Conservation Commission, was created without authority of Congress, and its continuance during the administration of President Taft was made impossible by act of Congress. However, Congress, on March 3, 1909, established the National Waterways Commission.

See CANALS AND OTHER ARTIFICIAL WATER WAYS; LAKES, JURISDICTION AND NAVIGATION OF; NATIONAL WATERWAYS COMMISSION; RIVERS, JURISDICTION AND NAVIGATION OF.

References: Inland Waterways Commission, *Preliminary Report*, 1908; Conference of the Governors of the U. S., *Report*, May 13–15, 1908.

E. R. JOHNSON.

INNOCUOUS DESUETUDE. An expression used by President Cleveland in a message to Congress March 1, 1886, to characterize the Tenure of Office Act of 1867. "And so it happens that, after an existence of nearly twenty years of almost innocuous desuetude these laws are brought forth . . . and put in the way of an executive who is willing, . . . to attempt an improvement in the methods of administration." See CLEVELAND, GROVER.

O. C. H.

INSANE, PUBLIC CARE OF. The need of restraint of liberty in the proper care of insane persons, both for their own protection and for that of the public as well, naturally made the first attempts at state interference chiefly commitment laws. Such rigid safeguards have been thrown around the sane and devised to protect individual liberty and prevent the fraudulent taking of the property of persons falsely "charged" with insanity that this most distressing form of sickness is rendered difficult of treatment from a medical point of view. Many states still require trial by jury with the individual in court before commitment can be made. Recent progress in the humane treatment of the insane lays emphasis on the kindly care of the physician and demands temporary or permanent custody of the patient in the same way it is obtained for sick people in ordinary hospitals. The decision as to legal commitment should rest chiefly on medical testimony and not on evidence and procedure such as would characterize a criminal trial, unless the patient is charged with crime as well as with being insane and therefore if found guilty should be adjudged to belong in the class of criminal insane.

Formerly the public care for the insane was practically restricted to the pauper insane who were put under restraint in local jails or almshouses under conditions of treatment which were revolting and barbarous but harmonized with the then prevalent idea that the insane were possessed of devils. The work of the seventh Earl of Shaftesbury in England who for fifty years served as chairman of the lunacy commission, and the revelations of Dorothea Lynde Dix concerning conditions in the United States, led to the creation of state or county asylums for the insane where patients could be cared for as sick persons and partly or wholly at public expense.

The growth in numbers of insane has made it impossible to provide sufficient accomodations in state institutions for all the insane, and county and local care even in almshouses is not yet wholly abolished. The tendency is toward a system of state care of insane at state expense, rather than as a charge on local funds, at least for paupers, with provision for voluntary commitment for rich and poor alike. Practically all institutions where the insane are kept are now placed under the rigid supervision or control by authorities of the state.

See DEFECTIVES, PUBLIC INSTITUTIONS FOR.

References: A. G. Warner, *American Charities* (2d ed., 1908), ch. xi; National Conference of Charities and Correction, *Annual Reports*, 1893, 222–262, 1894, 201 *et seq.*, 1910, 255 *et seq.*; S. G. Smith, *Social Pathology* (1912), 209–221 *et seq.*; H. H. Hart, *Special Report on County Asylums*, 1909.

SAMUEL MCCUNE LINDSAY.

INSPECTION AS A FUNCTION OF GOVERNMENT

Basis.—An unwritten but essential part of every government is its right to assure itself that its business is properly carried out. The modern type of representative government has accented the power of the legislative department to keep control over the finances of a country by the principle that no appropriation of money is made except by the legislature; and by providing for some system of audit of accounts. Some of the colonial assemblies of America appointed colonial treasurers for this purpose.

Inspection of Accounts.—Throughout the American system of government at present exists the double principle that there ought to be some official to check the accounts; and that the legislature has an unlimited right of investigating into the receipts and payments of the government. In national, state, local and municipal governments, there is usually some official, auditor or controller, whose signature is necessary for the payment of money, and whose duty it is to assure himself that the payment is authorized by law and that

all the formalities have been observed. It is his function to examine the invoices, certificates, and other papers. The official of the United States Government charged with this duty (*see* TREASURY DEPARTMENT) is the comptroller of the treasury. About 1896 the holder of that office, refused to pay sugar bounties which had accrued under the McKinley act of 1890 (*see*).

Inspection of Purchases.—Under all governments money must be paid by officials who cannot possibly see the goods or observe the services for which the money is paid. Hence some system is necessary to make sure that the invoices and vouchers submitted are correct. In most of the federal departments there is an elaborate system for inspecting supplies, checking off quantities and—one of the most difficult points in the system—trying to make out whether the goods delivered are in accordance with the requirements of the Government and the samples. In the military and naval service this work is ordinarily done by regular officers detailed for that purpose or certifying for their own posts or ships.

State and municipal services are seldom so concentrated; and one of the weak points of state government is that goods are commonly certified by officials of that department or institution by which they are used. In many states the institutions are compelled to submit uniform accounts so that it is easy to compare prices paid for supplies of the same kind. In several of the states, as Minnesota and West Virginia, a general board of control (*see*) has been appointed for state institutions to make the purchases and keep the accounts for all of them (*see* STATE EXECUTIVE). In the cities, supplies are delivered at a comparatively small number of places, and are easier to track; but they suffer from padded pay rolls of the employees, which are not unknown in national and state governments. The certifying officer may allow names to stand on the pay roll of people who render no service or may enter dummy names, and draw the pay himself. This is simply a convenient method of stealing.

A second form of inspection is that of public accounts, and of the acts of subordinate governments, by representatives of superior governments. The Federal Government has no department of dependencies and territories; but the Secretary of the Interior, keeps in relation with the territorial governments, and the Secretary of War with the dependencies. Inasmuch as all their executive officials are appointed by, or responsible to the Federal Government, there is a kind of inspection, through examination by the President or department head into complaints brought with relation to those governments.

The Federal Government has no authority over a state officer, except with regard to militia used in the government service, and those concerned with elections for United States Senators, Representatives and presidential electors. The Treasury may examine into payments made to the state for agricultural colleges (*see*) and experiment stations (*see*).

In the Philippine Islands there is an automatic machinery for supervising the finances of the provinces, and of the municipalities which are the subdivisions of a province. The provincial treasurer is appointed by the insular governor and is required to report frequently on the accounts and finances of his province. He also has the right of supervision over the accounts of the municipalities.

No state in the Union, however, has come near such an efficient system of inspecting local accounts, though the states create all the county, city and rural governments, and have an undoubted right to provide for the examination and supervision of both state and local services performed by local officials. Many states have laws requiring the keeping of accounts in a prescribed fashion, but none of them has a state bureau of local accounts.

The Census Bureau in Washington calls for and gets the accounts of the cities throughout the Union in a prescribed form; and every few years issues a bulletin of comparative statistics, which is a kind of informal inspection. There are many irregularities in county and municipal affairs which could be discovered if the state so chose; but the only remedy at present is to prosecute the local officials, a long and tedious business. One of the most serious needs in state government is the creation of a department of public accounts to inspect and supervise both state and local accounts.

Inspection of Commodities.—A third form of government inspection is the examination by public officials of commodities offered for sale in private business so as to see that they conform to standards of weight, measure and healthfulness laid down by the government. The most familiar example is the sealing of weights and measures (*see*). Congress under the Constitution, (Art. I, Sec. viii, ¶ 5) has sole authority to fix the standards; and there are in Washington standard units of weights and measures, with which all public and private scales and measures should conform. The laws for comparing and applying these standards are carried out in almost all states by local officials who neglect their duties. Recent investigations have shown that more than half the weights and measures used by the retail provision trade in the city of New York, cheat the buyer. Perhaps eventually Congress will refuse to allow, in interstate commerce, the transportation of goods except in weights or measures officially ascertained and certified.

Inspection of Foods and Drugs (*see*).—Congress, 1906, provided for inspection of slaughter houses and packing houses producing goods for interstate trade and particularly for

export. The reform was reluctantly accepted by the packers till they discovered that the Government inspection gave people confidence in their goods. There are some systems of local inspection of the production of food.

A number of the states maintain inspectors of cattle with the power to kill any animals believed by them to have tuberculosis or other infectious disease.

Miscellaneous Inspections.—The Federal Government also keeps up a force of special inspectors of the Treasury Department principally to detect frauds on the tariff; and another body of post office inspectors who look into irregularities in the use of the mails (*see* FRAUD ORDERS) and keep the postmasters up to their work. A force of special inspectors is used to collect evidence as to depredations on land belonging to the United States, and particularly to locate frauds in the location of timber and coal lands. The Federal Government also maintains a large force of inspectors to enforce the laws on the manufacture of fermented and distilled liquors and tobacco so as to assure itself of the payment of the tax.

Many of the western states provide for the public grading, inspection and weighing of grain, and the creation of enforcing machinery. This is usually an inspecting department, though in some states supervision is put into the hands of a state railroad and warehouse commission. Similar laws have in some of the southern states been enacted to define the grades of cotton seed meal, and to regulate the grading, weighing and sampling of tobacco. The candle power of gas is in some states regulated by law, and some provide detailed rules for the grading of lumber. There is also official inspection of cotton by municipal authorities in some of the primary cotton markets of the south.

Proper inspection is one of the healthiest ways of keeping the American governments to their work. It has been very successful in the federal service, notwithstanding its many ramifications, perhaps because of the permanent tenure of the inspectors. The great difficulty in the states and municipalities is that with the shift of officials inspectorates are likely to pass to people who have not sufficient knowledge of the tricks of the trade to cope with those to whose interest it is to defraud.

See BUSINESS, GOVERNMENT RESTRICTION OF; COMMERCE AND LABOR, DEPARTMENT OF; HEALTH, PUBLIC REGULATION OF; INSPECTION OF COMMODITIES; LABOR, DEPARTMENT OF; PURE FOOD.

Reference: Bibliography in A. B. Hart, *Manual* (1908), § 146.

ALBERT BUSHNELL HART.

INSPECTION OF FOOD AND DRUGS AS A PUBLIC FUNCTION. Federal Inspection.—The most far-reaching federal inspection statute is the "Food and Drugs Act" of June 30, 1906, which prohibits the shipment of adulterated and misbranded foods and drugs in interstate commerce, the exportation or importation of such commodities, and their manufacture in the territories of the United States.

The act of Congress, 1906, provides that labels of proprietary drugs must bear a true statement of any harmful contents, and that articles of food shall be pure and properly labelled. This act is enforced by inspectors who collect samples and make up statements which are submitted to the Department of Agriculture, which may then either warn the parties to desist or may institute prosecutions against them.

The work is conducted by the Department of Agriculture under the Secretary of Agriculture as the executive head, and its immediate enforcement lies in the Bureau of Chemistry under the Chief of the Bureau and a board of three. In the inspecting of imported foods and drugs, under the acts of 1848, 1897, 1906 and 1908, the Department of Agriculture coöperates with the Treasury Department. The Federal Meat Inspection Service operates under acts of 1890, 1891, 1895 and 1906. The inspection is conducted through the Bureau of Animal Industry of the Department of Agriculture.

State Inspection.—The federal food and drug acts have been supplemented by state pure food laws. Since the passage of the federal act of 1906 state pure food laws with enforcing machinery have become almost universal. They usually make the sale of impure or adulterated and misbranded foods a punishable offense. Forty-six states and territories have, also, established standards for dairy products. Some have fixed standards for ice cream; some have placed decayed eggs under the ban of their pure food laws; and others have enacted "cold storage laws."

Federal meat inspection is supplemented by state laws which provide for the inspection, quarantining or killing of sick animals, dipping of sheep, sanitation of cars, yards and slaughtering establishments, and inspection by state agents.

Municipal Inspection.—State inspection laws are frequently supplemented by statutes authorizing the municipalities to undertake local inspection. Milk inspection has gone further than other branches of city inspection, but other articles, such as butter, vinegar, game, fish, poultry, and meat are frequently subject to local inspection.

See MARKETS, REGULATION OF; PURE FOOD.

References: U. S. Bureau of Animal Industries, *Regulations Governing the Meat Inspection of United States* (1908); L. I. Kebler and Earl T. Ragan, "Drug Legislation in the U. S." in U. S. Bureau of Chemistry, *Bulletin No. 98* (1906); W. D. Bigelow, "Food Legislation During the Year Ended June 30, 1907" in *ibid*, *Circular No. 112* (1908), Pts. I, II, "Food

Legislation During the Year Ended June 30, 1908" in *ibid, Circular No. 112* (1909); H. W. Wiley, *Foods and Their Adulteration* (1907); A. D. Melvin, "Federal Meat Inspection Service in U. S. Bureau of Animal Industries," *Circular No. 125* (1908); J. C. E. Merrill, "Classification of Grain into Grades" in Am. Acad. of Pol. and Soc. Sci., *Annals*, XXXVIII (Sept., 1911). GROVER G. HUEBNER.

INSPECTOR-GENERAL. The Inspector-General is the head of the Inspector-General's department of the War Department (*see*). His duties relate wholly to the inspection of the various branches of the service. The Inspector-General and assistants, consisting in 1911 of one colonel, five lieutenant-colonels and twelve majors, inspect military posts (*see*), stations and commands, the military academy (*see*), the service schools, the armories (*see*) and arsenals, the depots of the supply departments, the recruit depots and the main recruiting stations, the military prisons (*see*), the Army transports, the mine planters, the cable ships, the ungarrisoned posts, the national cemeteries, the money accountability of disbursing officers of the Army, and unserviceable property presented for condemnation. **References:** Secretary of War, *Annual Reports;* J. A. Fairlie, *National Administration of the U. S.* (1905), 143. A. N. H.

INSPECTORS OF ELECTIONS. Inspectors of elections are persons selected by the different parties, or in case of primaries, by different candidates, to be present at each voting place, and watch the procedure of the election. The inspectors are usually the challengers. They may be present after the polls have closed, and see that the judges and clerks do not purposely or accidentally make mistakes. The inspectors are not so necessary in elections in which party lines are drawn, because the election officers are usually designated from all the recognized parties and protect their own voters. **See** BALLOT; ELECTION RETURNS; FRAUDS, ELECTORAL; RETURNING BOARDS. **References:** Election laws of the different states; F. J. Stimson, *Law of the Federal and State Constitutions of the U. S.* (1908), Bk. III, §§ 230–233. T. N. H.

INSTITUTIONS, STATE, ADMINISTRATION OF. The administration of the state institutions has passed through many experimental stages. The present tendency is toward centralization. A single board of a few numbers, usually bipartisan, in several states is charged with the administration of a number of state institutions.

Prisons.—Prisons are giving up the system of leasing the labor of the convicts; and the responsible authorities must carry on the business of making commodities, usually only for state institutions. Many prisoners are employed on the prison farms. They are secured while at work on the farms partly by conspicuous clothing and mainly by guards with rifles In some states are found a penitentiary, reformatory, boys' industrial school, and girls' industrial school.

Insane Hospitals.—These are very numerous and well equipped. Ohio has seven, with a population of about 1,500 in each. The principal industry at insane hospitals is farming, many of the inmates performing manual labor. The central board plan eliminates many of the opportunities for graft in the administration of these hospitals. The board expects the superintendent to be both a business manager and a physician skilled in the various types of insanity.

Defectives.—Epileptics are usually cared for at a separate institution administered in very much the same way as the insane asylums. State institutions for the blind, the deaf and dumb, feeble-minded, and inebriates, are sometimes provided.

Educational.—There is a large number of state institutions of higher learning. Some states have several state-supported universities; thus Ohio supports Ohio University, Ohio State University, Miami University, and, in part, the colored college, Wilberforce. Agricultural colleges are often connected with the state universities. State normal schools abound, sometimes connected with the university. The administration is similar to that of the university.

See BOARDS OF CONTROL, STATE; BOARDS, STATE EXECUTIVE; CIVIL SERVICE, STATE; STATE DEPARTMENTS, HEADS OF; STATE EXECUTIVE; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: A. B. Hart, *Actual Government* (1908), 146; J. H. Finley and J. F. Sanderson, *Am. Executive* (1908), ch. xiii; F. N. Thorpe, *Federal and State Constitutions* (1909).

T. N. HOOVER.

INSTRUCTIONS TO MILITARY AND NAVAL AUTHORITIES. The President is Commander-in-Chief of the Army and Navy of the United States; but direct orders usually emanate from the War Department. In 1855 General Scott urged that those who gave orders to a commanding general should "condescend to speak in the name of the President;" but was rebuked in a legal opinion to the effect that "the direction of the President is to be assumed in all instructions and orders issuing from the competent departments," a view doubted by General Sherman in 1875. Generals in the field have objected to the issue of orders to their subordinates in disregard of the regular channel of communication; and strenuous objection was encountered when a diplomatic agent was denied the right to communicate directly with the enemy in the Mexican War. Scott also resented the "superabundant cau-

tions" received from the Secretary of War (*see* GUADELOUPE HIDALGO, TREATY OF; MEXICO, DIPLOMATIC RELATIONS WITH).

The best modern practice, that of the German army, forbids instructing any subordinate in the elements of strategy or tactics, or depriving him of the initiative in matters which fall under his own observation. A distinction between orders and instructions is found convenient: the former must be literally obeyed; but instructions only convey the chief's wishes, and are not to be carried out if impracticable. Unnecessary detail would be regarded as an unwarranted censure, implying ignorance of military duties; but clear indications of the assumed position of the enemy and of the general purpose of headquarters are indispensable to intelligent and effective coöperation between headquarters and the military or naval authorities on active service.

Careful training is required to enable those drafting instructions to eliminate whatever is superfluous or impertinent. Misunderstandings may be avoided by making all officers familiar with general regulations or instructions, like those contained in the masterly "Instructions for the Government of Armies in the Field" issued in 1862; but these settle judicial or administrative questions rather than those relating to military command.

Instructions for naval commanders need not be encumbered with the problems of supply and communication to the same extent as those for armies on shore; and the use of sealed orders, to be opened at sea only, makes for secrecy. The use of the telegraph tends to conciseness and to conformity with the most recent information; but it also enables headquarters to inquire and suggest to a distracting extent; and the imaginative observer is sometimes able to magnify his fugitive impressions by transmitting them over land and sea. The new facilities were found irritating and obstructive by French generals in the Crimea in 1855 and by the Austrian commanders in Italy in 1859; and similar annoyance has been experienced in later wars. Wireless communication, having a practically unlimited range, may sometime be found obstructive in like fashion, especially in naval operations.

See ARMY, STANDING; OFFICERS, MILITARY AND NAVAL; WAR, CARRYING ON.

References: F. E. Chadwick, *Spanish War* (1911), I, 157, II, 230; C. von der Goltz, *Operations of War* (1896), 36, 39, 87; G. F. R. Henderson, *Science of War* (1905), 6399; K. zu Hohenlohe, *Letters on Strategy* (1898), II, 36, 53, 226; Winfield Scott, *Memoirs* (1864), II, 392, 540; E. Upton, *Military Policy of the U. S.* (1907), 146, 158, 281, 286, 394; *House Exec. Docs.*, 30 Cong., 1 Sess., No. 60 (1848), 814, 944, 960; *House Reports*, 45 Cong., 3 Sess., No. 555 (1878), 411; F. Lieber, *Misc. Works* (1881), II, 246–274.

C. G. CALKINS.

INSTRUCTIONS TO REPRESENTATIVES. During the early stages of the development of the representative system, the deputy was merely a delegate possessing a quasi-ambassadorial character and often bore instructions as to how he should vote. The modern idea, however, is that of uninstructed representation. This idea was first embodied in the French constitution of 1791 where it was declared that the deputy should be considered the representative of the entire nation and that no instructions should be given him. A somewhat similar provision is found in the constitutions or election laws of the German empire, Austria, Switzerland and other countries.

In the American system of government, the right of instruction has often been defended and sometimes exercised by legislatures, conventions and other bodies. The constitutions of some eighteen states declare that the people shall at all times have the right to assemble for the purpose of "instructing their representatives" and one (Iowa) declares that they shall have the right to assemble freely for the purpose of "making known their opinions" to their representatives. But the doctrine of uninstructed representation is maintained by most writers and publicists. On the contrary, it is said, that if the representative is to be what the word implies, namely, the agent through which the will of the constituency is to be expressed, he should endeavor to ascertain their wishes and register their will rather than his own. Between the two theories mentioned lies a third, namely, that while the representative should not be bound by instructions he should nevertheless not lightly disregard the wishes of his constituency when they have been made known to him in no uncertain way (*see* SENATE). The right of the legislature to instruct Senators of the United States as to how they shall vote on certain measures pending before Congress is maintained by many persons and has been exercised in a number of instances. Such instructions, however, are not legally binding and cannot be enforced upon the Senators to whom they are given.

See CONGRESS OF UNITED STATES; REPRESENTATIVES IN CONGRESS.

References: J. W. Garner, *Intro. to Polit. Theory* (1910), 478–488; F. Lieber, *Polit. Ethics* (1838–39), II, 325; J. W. Burgess, *Pol. Sci. and Const. Law* (1891), II, 50.

J. W. GARNER.

INSULAR AFFAIRS, BUREAU OF. The Bureau of Insular Affairs of the War Department, an outgrowth of the conquests of the Spanish War, has charge of "all matters pertaining to civil government in the island possessions of the United States subject to the jurisdiction of the War Department." Formerly it had oversight of Cuban affairs during the two temporary American occupa-

tions, and of Porto Rico from 1898 till the establishment of civil government in 1900. Its supervision now extends to the Philippines; to Porto Rico since July, 1909; and to the collection of the San Domingan debt. The bureau is substantially an American colonial office, although a number of insular possessions are outside of its jurisdiction. Among its various duties, it collects information regarding Philippine, Porto Rican, and San Domingan affairs for the President, Secretary of War, and Congress; keeps the Philippine accounts, a kind of comptroller's review; selects, by examination or otherwise, candidates in the United States for Philippine positions; supervises the education of Filipino students in the United States; purchases the supplies bought in the United States for the Philippine Government; tabulates all commercial statistics relating to the islands; collects public documents and prepares exhaustive reports. The present (1914) chief of the bureau is Brigadier-General Frank McIntyre, who succeeded Brigadier-General Charles R. Edwards in 1912. **References:** Chief of the Bureau of Insular Affairs, *Annual Reports*; C. R. Edwards, "The Work of the Bureau of Insular Affairs" in *National Geographic Magazine*, XV (1904), 239–255, 273–284.

G. H. B.

INSULAR CASES. The group of cases decided by the Supreme Court of the United States in 1901, in which was decided the constitutional status of the islands obtained by this country from Spain as one of the results of the Spanish American War, have come to be known as the Insular Cases. By the treaty of peace by which the annexation of these islands was provided for it was declared that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress" (Art. IX). In the case of DeLima *vs.* Bidwell (182 *U. S.* 1) it was held that immediately upon the proclamation of the treaty at Washington, the island of Porto Rico (and, inferentially, the other island ceded) ceased to be "foreign country" within the meaning of the tariff law then in force providing for duties upon articles "imported from foreign countries." "By the ratification of the treaty of Paris," the court declared, "the island became territory of the United States, although not an organized territory in the technical sense of the word." Before the treaty of cession, however, but after the occupation by American troops, the island was foreign territory, for, it was declared in Dooley *vs.* United States (182 *U. S.* 222), reaffirming the doctrine of Fleming *vs.* Page (9 *Howard*, 603), conquest or military occupation does not in itself operate to annex territory to the United States. In Downes *vs.* Bidwell (182 *U. S.* 244) the much more difficult question as to the extent of the legislative powers of Congress over these territories required solution. By an act of 1900, known as the Foraker Act, Congress had provided for the imposition of duties upon imports into the United States from Porto Rico. This raised the question whether Congress could thus legislate specially for Porto Rico, or whether it was bound by the constitutional provision that "all duties, imports and excises shall be uniform throughout the United States" (Art. I, Sec. viii, ¶ 1). And this, in turn, of course, raised the general question as to the extent to which Congress, when legislating for any of the islands ceded by Spain, is controlled by the various limitations restricting its action when legislating with reference to the states of the Union. The court in its opinion divided. Four justices, argued that, immediately upon annexation, the islands became an integral part of the United States in the sense that the Constitution in all its provisions became *ex proprio vigore*, operative. One justice (Brown) asserted that Congress is restricted by the limitations of the Constitution only when dealing with the member states of the Union, and with those territories over which, by congressional action, the Constitution has been extended. The remaining four justices took the position that there is a distinction between those territories which, after annexation, have been "incorporated" into the United States, and those which have not; that the treaty-making power is competent to annex but is incompetent to incorporate territory, and that, until incorporated, a territory is not a part of the United States within the meaning of that term as employed in the provision that duties and imports shall be uniform throughout the United States. In Hawaii *vs.* Mankichi (190 *U. S.* 197) it was held that the provisions of the Fifth and Sixth Amendments with reference to indictments (*see*) and jury trial (*see*) do not apply to the unincorporated territories. In Rassmussen *vs.* United States (197 *U. S.* 516) the doctrine was squarely laid down that the "incorporation" and not the "organization" of a territory is the test as to the general applicability to it of the Constitution. The general argument of the court in this last case indicates that that tribunal has definitely adopted the distinction between incorporated and unincorporated territories.

See CITIZENSHIP IN THE UNITED STATES; TERRITORIAL JURISDICTION OF THE UNITED STATES; TERRITORIES OF THE UNITED STATES, ORGANIZED; TERRITORY, CONSTITUTIONAL QUESTIONS OF.

References: W. W. Willoughby, *Constitutional Law of the U. S.* (1910), ch. xxx; L. S. Rowe, *The United States and Porto Rico* (1904), ch. iii; H. C. Black, *Constitutional Law of the U. S.* (3d ed., 1910); D. K. Watson, *Constitution of U. S.* (1910), II, 1267–1281.

W. W. WILLOUGHBY.

INSURANCE AND SOCIAL WELFARE

The principle of all kinds of insurance is fundamentally and essentially social. Whether provided by the state or by private business organizations, insurance is an effort to carry collectively the burden of risks to which all who enter into the insurance relationship are liable at some time, or risks which are certain for some members of the insured group but not for all. The cost of carrying the risks or of meeting the burden at the particular time when it occurs is distributed through insurance over a longer period of time. In the first class we have such risks as death, for which life insurance is instituted; sickness for which there is sick insurance. In the second and more numerous group are the risks of loss of property through theft, fire, earthquakes, hail, and various unusual natural phenomena; the loss of life or working power through accident, invalidity, old age, unemployment, etc. In all of these matters the state has an interest not merely to provide an easy and safe method to enable individuals to carry these risks and encourage them to provide a regular means of carrying them so that they are not worsted in the economic struggle and thrown upon the community as a public charge, but more particularly the interest of the state lies in the creation of insurance funds and business organization back of funds in which there is a very strong motive to prevent the occurrence for the relief of which these funds will be used up. Thus every force—and insurance is one of the strongest economic forces—that seeks to reduce mortality and prolong life, to promote and preserve health, to prevent accidents and make industry safer for the workers engaged in it, to make employment and the opportunity to earn a living by honest labor more secure, to lengthen the effective period of working life and thus postpone invalidity and old age, has for the state the highest value.

Experiments in Social Insurance.—Only in recent times have governments recognized the possibilities of social insurance. For a much longer period governmental supervision and inspection as a means of preventing fraud in the use of insurance funds has been recognized as a necessary function of government everywhere. The most complete system of social insurance organized by the state is probably that of Germany, with the still newer scheme of England, a close second. One of the earliest attempts is found in the Prussian Code of 1810, which provided that an employer must care for and support his servants who became incapacitated for work. Prussia, likewise, in 1845, compelled workmen to join sick funds, and, in 1849, employers were also compelled to contribute to the cost of carrying sick insurance. The miners' sick funds, which were also regulated by the law of 1845, were of much older existence. In the United States the principle of social insurance was recognized in the first decade after the adoption of the Federal Constitution, when the United States Government established a sick insurance and benefit fund for seaman, which was one of the first systems of the kind in the world. As in the case of the later miners' fund in Europe, the Government singled out a particularly hazardous occupation and attempted to provide for its risks, and from this small beginning the United States Public Health Service has been developed, which now serves the cause of health in many other occupations as well.

German Workingmen's Insurance Laws.—The German system began with a sick insurance law passed in 1883, compulsory for the majority of workers in all occupations, and requiring them to belong to an insurance fund and contribute two-thirds of the cost, while their employers contribute one-third. They receive free medical attendance, money benefits, maternity and funeral benefits, and pensions for invalid widows and orphans of insured persons. This was promptly followed by the law of 1884, providing for accident insurance to be paid for by employers, but so coördinated with the sick insurance plan as to provide that in the majority of accidents during the first fourteen days of incapacity, the burden falls on the sick fund. In 1889 was provided insurance against old age and invalidity.

These acts have been amended and finally codified in a still more perfectly coördinated system in the German Workmen's Insurance Code of 1911, a translation of which, by Dr. Henry J. Harris, has been published by the United States Bureau of Labor (*Bulletin 96*, 1911). A new feature of this code is the provision for survivors insurance, popularly called widows and orphans insurance. The German insurance plan has been severely criticised by all parties to it; the general taxpayer, because of increasing tax burdens due to the relatively small state contributions—the government bearing the whole administrative cost and making a substantial contribution to the old age payments; the employers, because of added cost of production; and workingmen, because of the burdens of premiums which they must pay, thus reducing their present income, and because of the small and inadequate benefits they receive when the misfortunes against which they are insured occur. On the other hand, there is, throughout the German Empire, universal testimony to a greater sense of security, less

worry, better health and a prolonged period of working efficiency, attributable in large part to the insurance legislation. No political party seriously proposes to repeal this legislation.

English Social Insurance.—In England a less complete scheme but, in some respects, a more far-reaching plan of state aid and interference has been enacted into law. This plan began with the Employers' Liability and Workmen's Compensation Acts of 1897, requiring employers to compensate their workmen for loss of life or working capacity arising from accidents during employment. This compelled the majority of employers to insure against accidents in private companies as the state did not provide any means of insurance. In 1908, however, an old age pensions act, establishing a non-contributory system, was in reality an extension of social insurance because the pensions were paid out of the proceeds of taxation and the burden thus widely distributed. Finally, in 1911, the National Insurance Act, to provide for insurance against loss of life, unemployment and for other purposes, is a complete contributory scheme affecting a large part of the working population of Great Britain and requiring payment by employers and employees alike.

Compensation and State Insurance in the United States.—In the United States, apart from the federal action relating to seaman in the early days of our history, we have had an important development of insurance of all kinds through voluntary and private methods and agencies. The increased need for provision for industrial accidents has led to stronger employers' liability laws, giving rise to more adequate provision for the insurance of employees, and, in fourteen states, to an attempt to introduce workmen's compensation. All of these statutes are of very recent origin (Maryland, 1902, to Arizona, 1912) and all but three are elective, that is, employers are not required to accept the act but are subject to a greater liability under the employers' liability laws if they do not. In two states, Washington and Ohio, insurance is made obligatory, while Massachusetts and several of the other states that have the elective plan have provided for optional state insurance. Every effort is made in these statutes to encourage insurance as a means of economically meeting the risks involved and assuring the largest possible benefits at the least cost to those who pay the premiums. Also every effort is made to encourage foresight, prevention and safety devices, and to promote thrift. The prevailing spirit of American institutions is doubtless against compulsory insurance. That the workman ought to save and make use of savings banks to provide a fund for emergencies and, by annuities, for the protection of his possible period of invalidity or old age, coincides with our strong individualism, but there is an increasing feeling that workingmen cannot always save from their meagre incomes under the pressure of an increasing standard of living which is desirable from the point of view of public policy, and that in any event they will not make adequate provision. On the other hand, as experience in Germany shows, a compulsory plan on a meagre scale does reach the thriftless and those who would likely be a public burden, and does furnish an attractive, safe and economical plan for those who learn the first lessons of thrift and are encouraged to take out added protection not required by law.

Constitutional Difficulties.—These make the introduction of workmen's compensation and compulsory insurance laws extremely difficult in American states. A very modest New York compensation act (1910), applicable only to extra-hazardous industries, was held, March, 1911, unconstitutional by the court of appeals (Ives *vs.* South Buffalo Ry. Co., 201 *N. Y.* 171) as the taking of property without due process of law. The supreme court of Washington, however, has since held valid a compulsory law providing for state insurance in hazardous industries, including work done under public authority (Act of October 1, 1911) and creating an industrial insurance department of the state government (*ex* Rel. Davis-Smith Co. *vs.* Clausen, 65 *Wash.* 156). The Ohio statute of January 1, 1912, which was elective but provided for state insurance under a state liability board of awards, was upheld by the supreme court of Ohio (State *vs.* Creamer, 85 *Ohio State* 349) but this act has been superceded by a new compulsory act, March 14, 1913, under the new constitution of Ohio.

Federal Legislation.—Congress has passed a federal compensation act applicable to persons employed as artisans or laborers in certain government employments (Act of May 30, 1908) which was extended, March 11, 1912, to apply to hazardous work under the Bureau of Mines or the forest service, and, also was made to cover the Isthmian Canal employees engaged in hazardous employment, Act of March 4, 1911. These acts however, are generally considered relatively inadequate and have established a standard lower than that in many states. Efforts are now being made to revise them. A federal scheme of complete social insurance—sickness, accident, invalidity and old age—has been discussed for years and might be constitutionally established through the taxing power, but has not yet reached the stage of practical consideration.

See INSURANCE, INDUSTRIAL; INSURANCE, LEGAL BASIS AND REGULATION OF; PENSIONS, CIVIL; PENSIONS FOR TEACHERS; SAVINGS BANK INSURANCE; UNEMPLOYMENT.

References: H. R. Seager, *Social Insurance* (1910); W. H. Dawson, *Social Insurance in Germany, 1883–1911* (1912); U. S. Commissioner of Labor, "Workmen's Insurance and Benefit Funds in U. S." in *23d Annual Report*, 1908, "Workmen's Insurance and Compensa-

tion System in Europe" in *24th Annual Report*, 1902; L. K. Frankel and M. M. Dawson, "Workingmen's Insurance in Europe" in Russell Sage Foundation, *Publications*, 1910; N. Y. Employers' Liability Commission, *Report* (1910–1911); Mass. Commission on Compensation for Industrial Accidents, *Report*, 1912; Nat. Municipal League, *Proceedings*, 1909 (Atlantic City), 1910 (Chicago); A. S. C. Carr, W. H. S. Garnett and J. H. Taylor, *National Insurance* (1912). S. McC. Lindsay.

INSURANCE COMMISSIONS AND COMMISSIONERS. Insurance commissions and commissioners are appointed by the governor of a state for a period usually as long as the term of the governor. The appointment of such commissioner is often made for political service rendered or to be rendered. In the Ohio campaign of 1912 one of the candidates before the convention had, for his manager, his insurance commissioner. A good salary is attached to this position. In the insurance department there are usually a superintendent, deputy, actuaries, clerks, statisticians—in all employees to the number of twenty to forty. The duties of the department are largely clerical. A list of all companies doing insurance business and a statement of the amount of business, securities, assets, losses paid, and other information, are published in the annual report of the commissioner. The office collects fees and taxes from the companies, and turns the amount collected into the state treasury. Companies from other states and foreign countries are very carefully administered and must pay for the privilege of transacting business in the state. The insurance department makes its reports annually, usually a volume each on fire and marine, life, and fraternal insurance. See Boards, State Executive; Insurance, Legal Basis and Regulation of; State Departments, Heads of. References: Insurance Commissioners of the States, *Annual Reports;* F. J. Stimson, *Law of the Federal and State Constitutions of the U. S.* (1908). T. N. H.

INSURANCE COMPANIES, TAX ON. Insurance companies are taxed in a variety of ways, the most common being a tax on premium receipts. For example, in New Hampshire, New York, Pennsylvania, New Jersey, Illinois, Wisconsin, Kansas and Missouri the rate is two per cent upon the gross receipts of foreign insurance companies. In some states the tax is collected by state officials, and in others by local officials; if by the former, the tax is frequently apportioned to the cities; and often the city's share, where this system prevails, is devoted to the benefit of the fire department. See Corporations, Taxes on. D. R. D.

INSURANCE, INDUSTRIAL. The term is used in a technical sense and should be differentiated from workmen's insurance (*see*) and other forms of social insurance. It differs from the ordinary level premium life insurance in four essential pionts: (1) the premiums are payable weekly; (2) they are collected by an agent who calls at the house instead of being payable at the office of the company; (3) the amounts of insurance are adjusted to a unit premium which the insured elects to pay—thus he buys whatever amount of insurance he can get for five cents per week premium or multiple thereof; (4) every member of the family can be, and often is, insured for a small premium.

The term industrial was applied to such insurance by the first company which developed the system in England in 1849 known as the "Industrial and General"; and popularly, because it is a form of insurance that seems to meet the needs of the working classes. It began as a form of burial insurance and its chief purpose has been to secure a decent burial for each individual in the family. Grave charges have been made that this insurance encourages extravagant funerals, also that the insurance of young children has led to their sacrifice for the insurance money. Such charges are vigorously denied by the big insurance companies and numerous governmental investigations in England and this country have not sustained them. There is some basis for assuming that this is an expensive and not wholly advisable form of saving. A New York statute (1910 ch. 634) restricts the amounts of insurance that may be written upon the life of another person without his consent.

See Fraternal Insurance; Insurance and Social Welfare; Insurance, Legal Basis and Regulation of.

References: F. L. Hoffman, *Hist. of Prudential Life Insurance Co. of America* (1900), *Life Insurance of Children* (1903); A. C. Campbell, *Insurance and Crime* (1902). S. McC. L.

INSURANCE, LEGAL BASIS AND REGULATION OF

Legal Basis of Regulation.—In a long series of decisions, beginning in 1868 with the case of Paul *vs.* Virginia, the Supreme Court of the United States has repeatedly refused to recognize insurance as commerce, and has therefore held that the Federal Government has no authority to supervise the business, and "that there is no doubt of the power of the state [using that term as contrasted with the Federal Government] to prohibit foreign insurance companies from doing business within its limits.

"The state can impose such conditions as it pleases upon the doing of any business by these companies within its borders, and unless conditions be complied with the prohibition may be absolute." Even as regards alien insurance companies, the executive of the United States will not entertain complaints of unjust discrimination by the several states, and such companies must seek admission specifically to each state in which they may wish to operate. In addition to the full supervisory powers of the state over the insurance business, the various local governments usually exercise a limited number of functions such as the enforcement of building codes or ordinances designed to promote fire prevention, and the imposition of taxes and license fees for general revenue purposes, or for the maintenance of inspection services or the support of fire departments.

Duties of Insurance Commissioners.—The courts of the several states vitally affect the insurance business through their interpretation of the laws and the companies' policy contracts and clauses; but in nearly all the most progressive states, supervisory control over insurance companies of all kinds is exercised by a special official designated as the superintendent or commissioner of insurance, in nearly all cases appointed by the Governor. In exercising such control over the business of the companies he is vested with extraordinary discretionary powers. Not only must he enforce the insurance statutes in their application to all companies (and as regards probably no business is there such a mass of legislation), but it is his duty to apply some fixed standard of solvency for each company. All non-resident companies must secure his permission before transacting business in the state, and all their agents must have his certificate of authority. Brokers must be licensed by him, and all companies must annually render a financial report in the form and manner prescribed. He may require statements from the officers or agents of the company at any time and on any matter, and may demand free access to all books and papers of any company or agent transacting business in the state. Any persons connected with the company may be examined by him under oath and for probable cause he may visit the home office of the company for the purpose of examining its affairs. Neglect or refusal in any of the foregoing matters usually subjects the company to heavy fines or to a supension of its right to transact business in the state. The latter penalty may be applied whenever the assets of the company appear to the insurance commissioner to be insufficient; or if in his judgment it has violated the insurance laws of the state; or if it has failed to comply with his requirements for information.

Scope of State Insurance Legislation.—The insurance laws of the country show an astonishing absence of uniformity or method among the several states. The more important provisions are the following:

(1) Enactments relating to organization of companies, from the time the articles of agreement are arranged until the company is authorized to assume risks; this includes regulation of the payment of dividends; conversion of mutual companies into stock companies; filing of reports, making of deposits of approved securities with the state, and the investment of the assets.

(2) The so-called reserve laws which define the standard of solvency and vary according to the type of insurance.

(3) Statutes regulating the types of contracts and endorsements used. Over one-third of the states have adopted a "standard fire policy" by statute; and in recent years the more advanced states have undertaken to standardize contracts and endorsements also in the life and accident insurance business. Many states, while not establishing the policy by statute, prescribe features which must be included in or omitted from the contract.

(4) Laws relating to the licensing and supervision of agents and brokers, including the prohibition or regulation of certain practices such as rebating; making of estimates; and the manner of advertising.

(5) Taxes imposed on the companies' funds, license fees, agency fees, fees for filing papers, charters, etc. In some states the insurance department has developed into little more than a tax and fee gathering agency.

(6) Definition of the procedure in case of litigation.

(7) Regulation of the expenses of companies, especially in the field of life insurance.

(8) Special laws, among the chief of which may be mentioned valued policy laws; anti-compact laws; anti-coinsurance laws; state fire marshal laws; retaliatory laws of various kinds; and laws governing the manner of conducting the election of directors.

State Control of Rates.—During the last few years, owing largely to the widespread belief that fire insurance rates are too high and often arbitrary and discriminatory in character, the subject of state made rates has assumed great importance. Two legislative commissions, namely those of Illinois and New York, reported exhaustively on the subject in 1911. In 1910 and 1911 Kansas, Texas, and Louisiana passed laws giving power to certain state authorities either directly or finally to fix the rates that fire companies may charge. In other states legislation is suggested which will give property owners the right to appeal to state authorities where it is felt that rates are too high or discriminatory in their application. In a number of other states a determined movement is also on foot to abolish fire underwriters' associations by statute or court decision, and thus prevent the companies from combining in rating associations.

The question of state control of rates of the insurance business led in the years 1910 and 1911, to epoch making cases relating to the constitutionality of the states' function.

See Fire Departments; Fire Protection; Fraternal Insurance; Insurance and Social Welfare; Insurance Commission and Commissioners.

INCOME AND PAYMENTS TO POLICY HOLDERS OF INSURANCE COMPANIES, 1890—1910

	1890	1900	*1905	*1910
Life Insurance				
Total income	$196,938,069	$400,603,257	$642,058,530	$781,011,249
Total payments to policy holders	90,007,819	168,687,601	264,968,883	387,302,073
Fire and Marine Insurance				
Total income	157,857,983	198,312,577	296,562,588	384,322,078
Total payments to policy holders	80,768,012	116,753,281	140,825,191	189,510,882
Casuality and Miscellaneous Insurance				
Total income	9,758,413	30,347,507	63,190,680	111,041,748
Total payments to policy holders	2,933,306	12,754,837	21,646,844	41,465,472

*Years 1905 and 1910 include records of Lloyd's and inter-insurance associations.

In the suit of the American Surety Company of New York against the state of Nebraska (Judge Thomas C. Munger of the United States district court rendering the decision) the Nebraska law of 1909 fixing the rates of surety companies was declared unconstitutional on the ground, to quote the decision, that:

> The surety business is in no way a monopoly, for individuals and partnerships are free to furnish such bonds in competition with them and to make any charge or no charge for assuming such risks. . . . The public interest in the business of such companies is no different from its interest in the business of any large mercantile or manufacturing company, whose capital, experience and facilities may enable it to have a widely extended patronage, . . . If the state may fix the amount of compensation for which an insurer may lawfully contract for furnishing such insurance, the state may dictate the price for which all other commodities shall be sold, including the price which may be paid for labor. This cannot be done. The Fourteenth Amendment to the Constitution protects the right of those engaged in purely private business to fix the price at which they will sell their services or commodities.

It was generally felt (as by the Illinois Commission) that the same principles must be applicable to fire insurance rates. More recently, the Federal Supreme Court in the case of the German Alliance Insurance Company *vs.* Hale, put a different construction on a law passed in Alabama, according to which the property owner was permitted to recover an extra 25 per cent of the amount of the loss if it appeared that the company in which he carried insurance belonged to, was a part of, or in any way connected with, any insurance tariff association. In passing on the constitutionality of this law, the United States Supreme Court took the position that the law does not infringe on the Constitution nor deprive the insurance company of any rights granted thereby. The state was held to have the power to impose any restrictions upon insurance companies that it chose prior to permitting them to transact business within the state. Following this decision the United States district court, at Topeka, rendered a decision in 1911 declaring the Kansas Rating Law of 1909 constitutional.

References: S. H. Wolfe, "State Supervision of Insurance Companies" in Am. Acad. of Pol. and Soc. Sci., *Annals*, Sept., 1905; S. S. Huebner, "Federal Supervision and Regulation of Insurance" in *ibid*, Nov., 1905, *State Supervision and Regulation of Fire Insurance Companies* (Address, Feb. 19, 1906); Illinois Insurance Commission, *Report*, Jan. 4, 1911; Senate and Assembly of New York, *Report of Joint Committee on the Fire Insurance Business*, Feb. 1, 1911; *Am. Year Book, 1910*, 346, 359, *ibid, 1911*, 320–323, *ibid, 1912*, 353–363. Principal cases are: Paul *vs.* Virginia, 8 *Wall.* 168 (1868); Liverpool Ins. Co. *vs.* Mass., 10 *Wall*, 566 (1870); Hooper *vs.* California, 155 *U. S.* 648 (1894); New York Life Ins. Co. *vs.* Cravens, 178 *U. S.* 389 (1899); Nutting *vs.* Mass., 183 *U. S.* 533 (1901).

S. S. Huebner.

INSURANCE, SAVINGS BANK. See Savings Bank Insurance.

INSURGENCY IN INTERNATIONAL LAW. From time to time there have arisen conditions in which, while hostilities existed within a state, the circumstances were such that the state did not wish to recognize the existence of war; and outside states were also unwilling to recognize the belligerency of the party fighting against the state. The Supreme Court of the United States has taken cognizance of "the distinction between recognition of belligerency and recognition of a condition of political revolt, between recognition of war in a material sense and war in a legal sense . . . the political department has not recognized the existence of a *de facto* belligerent power engaged in hostility with Spain, but has recognized the existence of insurrectionary warfare" [Three Friends (1906) 166 *U. S.* 1].

The status of insurgents is not completely defined, but practice seems to show that in the time of an insurrection both parties must conduct the hostilities with regard to the rules of civilized warfare and that citizens of foreign states are not liable to the treatment to

which they would be liable if belligerency had been recognized. "The admission of insurgency does not place the foreign state under new international obligations, as would the recognition of belligerency, though it may make the execution of its domestic laws more burdensome." See BELLIGERENCY; BLOCKADE PROCLAMATION; CONFEDERATE STATES; FILIBUSTERS TO AID INSURRECTION; INSURRECTIONS; RECOGNITION OF NEW STATES. Reference: G. G. Wilson, *Int. Law* (1910), 48. G. G. W.

INSURGENTS IN CONGRESS. The "insurgents" is the name first given during the Sixtieth Congress (1907–09) to a minority of the Republican members. "Insurgency" consisted in the refusal to support the official policy of the party as regularly defined by the party caucuses. It took the form of desertion of the regular party leaders and of opposition to the official party measures, and incidentally resulted in a reform of the organization of the House and of its rules of procedure (*see* RULES OF CONGRESS). The basis of insurgency was dissatisfaction on the part of an important section of the Republican party in the country with the regular party leadership in Congress. The chief source of dissatisfaction was the interpretation placed by the leaders upon the tariff plank of the Republican platform of 1908. Others were revealed in the debate on the platform in the Republican national convention of that year, when proposals that the party should pledge itself to provide for publicity of campaign contributions, for physical valuation of railroads, and for popular election of United States Senators were rejected. These proposals, together with the demand for a material reduction of the tariff, fairly indicate the nature of the differences between the Insurgents and the regular Republicans.

In the Sixty-first Congress (1909–11) the insurgents were substantially represented in both House and Senate. They opposed the Payne-Aldrich Tariff Act, enacted at the special session of 1909, and advocated the appointment of a tariff commission by Congress. They also generally opposed Canadian reciprocity, but voted for the campaign publicity act of 1910 and supported the direct election of United States Senators. They opposed the administration's railroad rate bill and forced the enactment of the more radical railroad regulation act of 1910. In the Sixty-second Congress (1911–13) the insurgents held their own in the House and secured the balance of power in the Senate between the regular Republicans and the Democrats. They again opposed Canadian reciprocity at the special session of 1911, but without success. They supported the farmers' free list, woolen and cotton bills, voting with the Democrats to pass all these measures over President Taft's veto, but this they failed to do. They also vainly advocated statehood for Arizona with the recall of judges. They voted for the campaign publicity act of 1911, and again supported, without success, the direct election of Senators.

The insurgents in Congress are of interest to the student of government because of their attack upon the organization and rules of procedure of the House of Representatives. The main objects of attack were the speakership and the committee on rules. The Speaker, under the then existing rules, possessed a large discretionary authority (*see* SPEAKER), and was charged with the abuse of his authority for the exclusive benefit of the regular majority of the Republican party, and contrary to the interests of the insurgent minority. The committee on rules shared with the Speaker the control of the party organization in Congress (*see* RULE, BRINGING IN A), and also represented exclusively the majority faction of the party. The insurgents, therefore, proposed two fundamental changes in the organization of the House: (1) the removal of the Speaker from the committee on rules; (2) the reorganization of the committee on rules on a more representative basis.

The first attempt to reform the rules was made March 15, 1909, in conjunction with the Democrats, and failed through the defection of the Tammany Democrats. The second attempt was made just a year later, and succeeded. The Speaker was removed from the committee on rules, and the latter was doubled in size. The result was the choice of the six Republican members by a majority vote in the Republican caucus, and of the four Democratic members by a similar vote in the Democratic caucus. There was no representative of minorities within the ranks of a single party. The speakership was stripped of a portion of its power, but the two-party system of government was maintained in all its traditional vigor. By the elections to the Sixty-second Congress, the Democrats gained control of the House of Representatives and proceeded to complete the insurgent program for the reform of the House. They entrusted the appointment of standing committees (which meant in practice the selection of the Democratic members only) to the committee on ways and means, the Democratic members of which were selected in advance of the opening of the new Congress by a special caucus of all Democratic members-elect. The regular Republicans, however, still controlled the Republican party caucus and entrusted the selection of the Republican members of the standing committees to their defeated candidate for the speakership, who became the official party leader.

See CANNON, JOSEPH G.; CANNONISM; PROGRESSIVE PARTY; PROGRESSIVES; REPUBLICAN PARTY; RULES OF CONGRESS; SPEAKER OF THE HOUSE.

References: *Am. Year Book, 1910*, 47–50, *1911*, 68–71, and year by year.

A. N. HOLCOMBE.

INSURRECTIONS, HISTORY OF

Early Colonial.—The causes of the first period of insurrections—tumults of settlement (1645–1719)—were the novelty and weakness of the colonial governments, especially of the proprietaries; the disturbances in England, particularly in their religious phase; the navigation laws; and tyrannical acts of government, or such acts as the economic condition of the colonies, or their resentment over new restrictions, gave excuse for considering as tyrannous. Underlying these, the sparseness and the character of the colonial population, with the hardships, economic disappointments, and burdens laid without reference to the undeveloped condition of the settlements, made the field a fruitful one for insurrectionary movements and gave excellent opportunity to the men who, for demagogic or legitimate reasons, inspired the risings.

In Maryland a series of five insurrections, or attempts, between 1645 and 1689 were the outgrowth of conditions in England, and their basis lay in the opposition of the Protestant major population to the Roman Catholic proprietary. In New Jersey economic causes were prominent in quit-rent tumults in 1672 and in the overthrow of Governor Basse in 1699. In the proprietary government of the Carolinas matters were very favorable for the rise of adventurers both as rulers and as insurgents; and there a combination of economic and religious conditions gave opportunity for several revolts between 1677 and 1719, and in the latter year led to the overthrow of the proprietary government in South Carolina.

The greatest insurrection of this period was Bacon's rebellion of 1676 in Virginia. The discontent due to the low price of tobacco, the unchecked Indian depredations, and the abuses of government under Governor Berkeley, found a real or a nominal leader in Nathaniel Bacon; and a force raised against the Indians but turned upon the governor gave the means for beginning the revolt. Bacon died and the movement was put down; but Berkeley was removed and other reforms followed. The economic condition, however, was not improved. This was blamed on the navigation acts, and the disturbance was in one respect a protest of the frontier against the indifference of the lower settlements; so that the contest is doubly linked to the tumults of the second period.

The Gove insurrection in New Hampshire in 1679 was a forerunner of the overthrow of Andros at Boston in 1689. The contrast is marked between this Boston affair and the contemporary Leisler's rebellion in New York and Coode's insurrection in Maryland, though all were echoes of the revolution in England. The first was a popular and successful movement by the leaders of the colony to regain their privileges of self-rule. Leisler was placed by accidental circumstances at the head of an excited populace fearful of popish plots and French invasions; he had powerful opponents who, aided by his own rashness, accomplished his overthrow. Coode was merely an agitator who through the chance omission to proclaim William was able to accomplish the undeserved destruction of Baltimore's government.

The Second Period.—The second period of insurrections (1765–1809) was connected with the first by a series of boundary and manorial riots and some protests against the policy of England. The phase which involved resistance to the laws of the home government (*see* REVOLUTION) had with the conflicts due to local conditions, a common origin in the earlier period of contentions and a common basis of insistence upon self-government, but little immediate connection. The boundary riots were a step toward the misunderstandings between the coast and the interior which in the second period took the place of the antagonism between the rights of the proprietaries and the settlers, and continued the strife between vested interests and individual rights, between legal power and democratic self-government. The War of the Regulation is illustrative of this. The inhabitants of the back country rose as in a revolt of peasants against the injustice of taxation based upon poll only, augmented by the lack of money with which to pay taxes, by illegal fees and other exactions, collusion of officials with those who profited by the sale of property under restraint, secret and irregular expenditure of local funds, and the hardship of attending a distant court. In 1768 the westerners resorted to a concerted effort to secure redress. This was the beginning of the Regulation proper. Three years of contention ended when Governor Tryon with 1000 militia defeated an unorganized mass of Regulators at the battle of Alamance on May 16, 1771. Many of the insurgents passed over to Tennessee where, later, they assisted in another resistance to the legal authority of North Carolina. This, with the troubled career of the self-constituted State of Franklin (*see*), and the tumults of the New Hampshire Grants (*see*), exhibited another aspect of the contest.

The post-Revolutionary attempts to force the issue of paper money, and their attendant resistance to tax collection, formed a widespread movement which culminated in the Shay's rebellion (*see*). These agitations were the result not only of economic conditions following the Revolution, but also of the teachings of that struggle, and in them the geographical cleavage was also often evident. In southwestern Penn-

sylvania many of the settlers were from Virginia and nowise in sympathy with the government of the state. Here the state excise, especially during 1786, was the chief cause of contention, and the facts that most of the whiskey was distilled in the West and that the neighboring states did not levy an excise, made the sectional phase an acute one. The Whiskey insurrection (*see*) was but a development of this earlier spirit of resistance. The Fries' rebellion (*see*) is of importance only as illustrating the political excitement of the time.

So far the troubles of this period have been risings of the interior against the coast, of the Anti-federalistic and democratic elements against the Federalistic principles, but in the attempts to nullify the embargo conditions were reversed. These contests were much like those against the navigation laws, the state of public opinion and open assistance in the violation making it evident that the purpose was not merely private gain.

Middle Period.—After the frontier had cleared the Appalachians, and federal direct taxation and excise had ceased, economic causes for insurrections disappeared; for the industrial conditions became homologous within each state except in the South, where no disturbances occurred. Two anti-democratic survivals caused trouble, however. In Rhode Island suffrage limitations led to the Dorr rebellion (*see*), and the continuance of feudal tenure on the great estates of eastern New York was the cause of tumults between 1839 and 1845. The characteristic insurrectionary movements between the War of 1812 and the Civil War were of social origin, the slavery question being chiefly responsible for them. Various servile insurrections, or attempts, occurred in colonial times; and the Gabriel insurrection in Virginia in 1800, and that led by Denmark Vesey in South Carolina in 1822, though both were foiled, displayed elaborate planning, led to the execution of many negroes, and caused much debate as to the outside influences to which they might be ascribed. But it was the Nat Turner insurrection of 1831 (*see* Turner) which awakened the fullest realization of the dangers lurking in a servile population, and caused, through its influence on southern legislation and southern opinion of the abolitionists, such an effect upon American history that it is one of the most important of the uprisings John Brown's raid at Harper's Ferry in 1859 (*see* Brown) was an insurrection in behalf of slaves rather than one by them. Most of the efforts to nullify the fugitive slave law by forcible rescues occurred after the passage of the act of 1850 (*see* Fugitive Slaves). The nine or more prominent cases were characterized by elements which made the participants public enemies and not mere rioters. A third appeal to force due to the slavery controversy was the Kansas struggle (*see*).

The Mormon war of 1857 and 1858 was due to unique social conditions. The Mormon hierarchy intended to rule in Utah without reference to the limitations of a territorial government, and the public mind, inflamed by the slavery contest, could not be tolerant of any other "peculiar institution;" so a federal force of 2,500 men was sent across the plains to seat the new governor. Defiant at first, the Mormons finally submitted and the governor was installed without opposition.

During the Civil War there were minor disturbances due to the enrolment, and draft riots occurred (*see*), but the great riot in New York, in spite of its size, possessed none of the elements of an insurrection. The conspiracies of the Knights of the Golden Circle (*see*) were intended to result in an insurrection, but the plans never culminated.

Recent Period.—Since the war, much of the opposition in the South during the Reconstruction period (*see*), especially in such events as the rising at New Orleans in 1875, was fundamentally insurrectionary. In the case of the great strikes we have a renewal of economic strife, but, as the distinction is one of class rather than of section, the insurrectionary intent is not so evident.

See Invasion; Order, Maintenance of; Riots, Suppression of.

References: C. M. Andrews, *Colonial Self-Government* (1904), chs. xiv, xvii; S. A. Ashe, *North Carolina* (1904), I chs. x, xi, xiii, xiv; E. McCrady, *South Carolina* (1901), I, chs. xxviii–xxx; W. H. Whitmore, *Andros Tracts* (1868); E. B. O'Callaghan, *Doc. Hist. of N. Y.* (1849), II, 1–438; B. C. Steiner, "Protestant Revolution in Md." in Am. Hist. Assoc., *Report*, 1897, 281–353; J. S. Bassett, "Regulators of N. C." in *ibid*, 1904, 141–212; E. P. Cheyney, *Anti-rent Agitation in N. Y.* (1887); T. W. Higginson, *Travelers and Outlaws* (1889), 185–336; W. A. Linn, *Mormons* (1902), 458–516. D. M. Matteson.

INSURRECTIONS, SUPPRESSION OF

Nature of Insurrection.—The existence of government ultimately depends upon the ability of the authorities to protect their normal and lawful operations from violent resistance or opposition. The milder forms of public protection and maintenance of order are met by the action of the courts, either through criminal suits or contempt (*see*) proceedings, or in some cases by injunction (*see* Government by Injunction). Tumultuous disorders usually can be met by the law of riot and riotous assemblages. Insurrection may begin in dis-

turbances like those of riots, and may not involve a longer or more determined resistance than a riot; but insurrection differs from ordinary offenses against good order both in its nature and in the ultimate remedy. The offense is not simply damage to property, or destruction of life, or aggravated disobedience to the lawful orders of constituted authorities: insurrection is an attack upon the government itself, an attempt for the time being to put an end to legal authority, with or without the ultimate purpose of subverting the government altogether, which may amount to rebellion (*see*). Hence the remedy for insurrection is not simply the arrest of violent men, nor the dispersal of a riotous assemblage, but the destruction of organized resistance and a dispersal of all bodies of persons connected with the disorder, even though at the moment they are not committing riotous acts.

Legal Penalties for Insurrection.—Within the United States, insurrections may be directed against territorial, state or national governments: resistance to city or other local authorities is simply resistance against the state; and by the time the movement assumes the character of an insurrection, it is commonly quite beyond the power of the local peace officers. Warrants may be issued for the arrest of the disturbers; and insurrection against the state may amount to treason. Only in the case of John Brown in Virginia in 1859 has any person ever been convicted and executed for treason to a state. If the violence is directed against the Federal Government it may amount to treason against the United States, and in 1794 in the Mitchell and Vigol cases, in 1798 in the Fries case, in 1807 in the Burr case, in 1808 in cases arising out of the Embargo, during the War of 1812, and other cases, and in a few cases during the Civil War men were convicted of treason.

No executions followed in any of these cases. In practice, treason trials are an aftermath rather than a deterrent of insurrection; for in some instance the insurrection goes to the extent of breaking up the operation of the court.

Insurrection against a State.—The American colonies were very familiar with riotous outbreaks, such as the Press Gang riot in Boston 1747, but except in the Revolution of 1688, and the Regulator troubles in North Carolina in 1770, no efforts were made to subvert the government. During the Confederation, however, insurrections intended to break up the existing governments occurred in Vermont, Western Pennsylvania, and in Massachusetts where the Shays' rebellion of 1787 was put down only by a little state army. Since that time, except during the disturbed reconstruction period, there has been little formal resistance to the working of state governments except in the anti-rent (*see*) troubles in New York in the '40's and the Dorr rebellion (*see*) of 1842.

Either by constitutional provision or under the common law, governors have the right to call out the state forces to suppress an insurrection. In recent years such calls have been issued generally because of labor strikes which spread into an organized resistance to the officers of the law. Except in Pennsylvania (*see* CONSTABULARY, STATE) the only available military forces are the state militia, made up chiefly of men who have other regular employments and who sometimes sympathize with the insurgents. Governors may also, and occasionally do, proclaim martial law in a disturbed region; and legislatures occasionally suspend the *habeas corpus*, so as to enable the governor to make arrests without immediate proof of guilt.

In the eyes of the Federal Government in 1861, the secession governments of the southern states were nothing but evidences of an insurrectionary, or rebellious subversion of the legal governments of the seceding states. In Virginia, the Federal Government throughout the war maintained a fiction that there was a loyal state government of Virginia, centered either at Wheeling or Alexandria. In Kentucky and Missouri, there were, at times, both a union and a secession legislature, one of which must have been under any theory insurrectionary. During reconstruction, there were rival governments in several states, particularly Arkansas and Louisiana. The radical government of Louisiana was, in 1874, temporarily overthrown by an armed movement which must be considered an insurrection.

Federal Aid in State Insurrections.—The dangerous insurrections of 1786 and 1787 led the federal convention to provide that the state should have the right to apply to the Federal Government for aid against domestic violence, and Congress has power to provide for calling forth the militia to suppress insurrections. In addition the United States guarantees (Art. IV, Sec. iv) to every state a republican form of government (*see*). Under these clauses, governors of states (more rarely legislatures) have, on numerous occasions, called upon the President to give federal aid, which may be done either by calling militia from other states or by sending troops or sailors. Such forces are not placed under the command of the governor, but remain under federal officers acting under orders from the President or inspired by the President. In almost all cases the forces actually employed are troops of the regular army who have no local relations with the scene of conflict and will obey orders to fire, and if necessary to fire low. No serious resistance continues in the face of such a command, although the soldiers may have to do police duty for a time.

Federal Interposition.—Under the clause guaranteeing a republican form of government military forces may be called out at the discretion of the President, if an insurrection

seems to threaten the existence of the state government. In practice the only instances of such a use of troops were during the reconstruction epoch where Republican state governments were threatened by rival Democratic state governments. The President has, however another kind of authority to use troops to suppress insurrections, *viz.*, when the insurrection is against the United States Government. Congress provided by statute of 1792, modified in 1795, 1807 and 1833, for the method of calling out militia for this or other purposes. In 1794, the so-called Whiskey insurrection (*see*) was put down by militia called by the President of the United States without the request and contrary to the desire of the governor of Pennsylvania. In 1807, the President issued a proclamation against the Burr insurrection and caused Burr's arrest and trial for treason.

In 1833, President Jackson made preparation to send troops to Charleston if nullification came to a head; and secured from Congress the so-called Force Bill enlarging the authority of the President to call out the militia in such cases. In 1858 a force of federal troops was sent out to Utah to maintain order and execute the laws. In 1861, militia was summoned from all but the seven states that had then seceded, with the purpose of putting down what was rather a rebellion than an insurrection.

In 1894, troops were summoned by President Cleveland contrary to the express desire of the governor of Illinois, to act in the violent railroad strike then going on. Here an insurrection could not be said to exist, but the President relied upon his authority to call out forces "to execute the laws of the Union." Since that time it has been widely accepted that the President may use troops to prevent interference with the mails or with interstate commerce. The federal courts attempted to reach the difficulty in another way by issuing injunctions against acts of violence and subsequently punishing for contempt of court those engaged in such acts of violence. From 1899 to about 1902, the resistance of the natives of the Philippine Islands to the new government was held to be insurrection against the United States and was put down by a use of military force; practically there was civil war.

See INTERSTATE LAW AND RELATIONS; LYNCHING; MOBS AND MOB RULE; NULLIFICATION CONTROVERSY; PRESIDENT, AUTHORITY AND INFLUENCE OF; REBELLION; RIOTS, SUPPRESSION OF; SECESSION CONTROVERSY; STATE SOVEREIGNTY; WHISKEY INSURRECTION.

References: "Federal Aid in Domestic Disturbances" in *Sen. Docs.*, 57 Cong., 2 Sess., No. 209 (1903); A. B. Hart, *Actual Government* (rev. ed., 1908), §§ 250–253, *National Ideals Historically Traced* (1907), ch. xviii; J. N. Pomeroy, *Constitutional Law* (1888), §§ 662–668; C. D. Wright, *Report on the Chicago Strike* (1894); F. J. Goodnow, *Comparative Administrative Law* (1902), §§ 119–129; J. I. C. Hare, *Constitutional Law* (1889); W. H. Dunbar, "Government by Injunction" in Am. Economic Assoc., *Economic Studies*, III (1898), No. 7; U. S. Industrial Commission, *Reports* (1900–1902), IV. ALBERT BUSHNELL HART.

INTENDANT. An official agent of the Crown in France before the Revolution; found also in the French colonies in America. In Alabama, the chief officer of incorporated towns is called an intendant. See COUNTY GOVERNMENT. References: J. A. Fairlie, *Local Gov't. in Counties, Towns and Villages* (1906), 209. J. A. F.

INTERCOURSE OF STATES. The right of intercourse may include the right of legation, which involves the sending and receiving diplomatic representatives; the right of commercial and other intercommunication involved in the consular functions; rights in regard to property and persons in a foreign state; the entrance of public ships. The right of intercourse usually refers particularly to maintenance of diplomatic relations—relations, which before the fifteenth century were not regarded with favor. Abstract theories that the earth belonged to all men, and that all men were free to go to any part as they willed, that a state was obliged to admit within its borders all who might apply, and similar generalities which have not been embodied in the practice of the most liberal states, were regarded as in some way sanctioning the contention that a state must receive a diplomatic representative from another state. In practice, diplomatic intercourse is not a right, the grant of which can be demanded, but when once granted it may be a serious breach of international obligations to refuse to receive a diplomatic representative.

A state may decline to receive a particular person as a diplomatic representative on the ground that he is not personally acceptable—*persona non grata.* This is not a discourtesy to the sending state, as both sending and receiving states should desire to have the person to whom their international business is entrusted a person whose presence would be acceptable; and certain persons, because of previous action, writings, religious or other sentiments, may be ill qualified to perform diplomatic functions at a certain post. It might savor of discourtesy for the United States to send to a state, as diplomatic representative, a man who had publicly expressed views derogatory to the ruler to whom he was sent; or a naturalized citizen who had previously been a revolutionary leader in the state to which he was sent. The refusal to receive such a person is not a denial of the right of intercourse. To avoid the possibility of the refusal of a *persona non grata* it is now customary for states before naming a repre-

sentative for an important permanent mission to inquire whether he is personally acceptable. The diplomatic intercourse of states has now become one of the most fruitful means of advancement of civilization.

See DIPLOMACY AND DIPLOMATIC USAGE; DIPLOMATIC CORRESPONDENCE; INTERNATIONAL CONGRESSES AND CONFERENCES; STATES, EQUALITY OF.

References: J. W. Foster, *Practice of Diplomacy* (1906), 36; Wilson and Tucker, *Int. Law* (5th ed., 1910), 159–168.

GEORGE G. WILSON.

INTEREST ON PUBLIC DEBT. See DEBT, PUBLIC, INTEREST ON.

INTERESTS. A term probably first used with its present derogatory signification by David Graham Phillips in his "Treason of the Senate" which appeared in the *Cosmopolitan* in 1906. With the enormous development of corporations within the last two decades the term interests came to be applied to business or financial organizations grouped under a common management. In short, the term denotes the great financial combines which control American business, finance, commerce and industry; and in its derogatory sense it implies the exercise by such financial organizations of their enormous power to influence government and legislation in their favor and to their financial advantage. O. C. H.

INTERIOR, DEPARTMENT OF

Origin and Jurisdiction.—In 1849, after the close of the Mexican War, when the existing departments were seriously congested with work, the Home Department was organized to administer those affairs which needed representation in the Cabinet. The title subsequently was changed to the Department of the Interior. From the beginning to the present time, the department has been made up of heterogeneous bureaus, having no distinct relations one to the other or to the main purpose of the department. The Patent Office was transferred from the Department of State; the General Land Office and the Pension Bureau from the Treasury Department; Indian Affairs from the War Department; and Pensions from the joint control of the War and Navy Departments. The accounts of the United States courts, the supervision of lead and other mines and the District of Columbia penitentiary also were lodged in the new department. Later, the Bureau of Education, the Geological Survey, the Bureau of Labor, Alaskan affairs, the national parks, the Reclamation Service, and, in 1910, the newly created Bureau of Mines, were placed in charge of the Secretary of the Interior, and the two assistant secretaries.

After various changes and transfers, the department now controls the public lands, Indian affairs, pensions, patents, geological surveys, mines, reclamation service, the territories (exclusive of insular possessions), education, the care of the government insane asylum, the Capitol building and grounds, national parks and antiquities, Howard University, the Columbian Institution for the deaf and dumb and the Freedmen's Hospital; and it is also charged with certain duties in regard to the streets and government lots in the District of Columbia. In conjunction with the Secretary of the Treasury and the Postmaster General, the Secretary of the Interior approves plans and estimates for public buildings.

Land Office.—The General Land Office deals with the location, settlement, survey, entry and patenting of the public lands, which have covered an area of 1,835,000,000 acres, and which now amount to about 680 million acres of unappropriated and unreserved lands. The net receipts for public lands in 1912 were $6,671,000. The office is administered by a commissioner, an assistant commissioner, law officers, and a large staff of clerks in the District of Columbia, and by a gradually decreasing force of local officers who maintain offices in localities where public lands are being sold to settlers (*see* PUBLIC LANDS).

Geological Survey.—The Geological Survey deals with classification, topographical surveys, and the investigation of mineral and water resources. Geologic surveys are conducted in 32 states and territories; topographic surveys have covered more than 1,100,000 square miles or 35.5 of the entire country; nearly 900 gauging stations throughout the country are in service; and valuable work has been done in the prevention of mine accidents. The last named function is now exercised by the National Bureau of Mines, created by act of May 16, 1910. At the head of the survey is a director, who has a corps of scientific assistants. The results of their labors are published in elaborate annual reports (*see* MINES AND MINING).

Reclamation Service.—The Reclamation Service deals with the irrigation (*see*) of arid lands, under the act of June 17, 1909 (*see* RECLAMATION OF PUBLIC LANDS). This act sets apart as a reclamation fund monies received from the sale of public lands in certain western states, and provides for the payment by settlers of the cost of reclamation works. The investment in such works, 32 in number, amounted in 1910 to 53 million dollars, of which sum 3 millions had been repaid by water users and purchasers of town-lots. The serv-

ice also coöperates with states to grant lands to corporations constructing irrigation works, under the act of August 18, 1894.

Indian Affairs.—The Office of Indian Affairs controls the allotment of and supervision over Indian lands, the object being to assimilate the Indian into the body politic with the greatest amount of protection to him and the least injury to the community. The Indian population now amounts to 200,000 persons (exclusive of the 100,000 persons included in the Five Civilized Tribes). Indians are located in 26 states, and 325 schools are maintained for their benefit (*see* under INDIAN).

Patents.—The Commissioner of Patents administers the patent laws and supervises all matters relating to issuing letters-patent for inventions and the registration of trade-marks (*see*). He is the tribunal of last resort in the Patent Office, and has appellate jurisdiction in the trial of interference cases, of the patentability of inventions, and the registration of trade-marks; appeals lie from his decision to the United States court of appeals of the District of Columbia. The number of patents (*see*) issued to 1912 was 153,013, of which nearly 30,000 were issued in 1912.

Pensions.—The Commissioner of Pensions supervises the examination and adjudication of claims for pensions arising out of laws of Congress granting pensions for army or navy service; claims for reimbursement for expenses of last illness and burial of deceased pensioners; and claims for military bounty-land warrants. In 1912, there were 860,294 pensioners, who drew 153 million dollars (*see* PENSIONS).

Mines.—The Bureau of Mines deals with the promotion of mining, the safety of miners, the treatment of ores, and the use of explosives.

Education.—The Commissioner of Education collects statistics and general information in regard to the progress of education, which statistics are published annually in a two-volume report and in numerous bulletins. He has charge of the government schools and also the reindeer industry of Alaska; and he administers the endowment fund for the benefit of higher education in agriculture and mechanic arts. The Alaska work will, in all probability, be transferred to the Territory, where it properly belongs (*see* EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATIONAL STATISTICS).

National Parks.—The government owns and maintains 13 national parks, comprising an area of 4,600,000 acres, all acquired since 1872; and in addition, there are 10 national monuments, which are classed as historic landmarks or objects of scientific interest. All are located in the western states and in Alaska, and the reservation of these parks and antiquities must be classed as among the few instances of foresight on the part of the Republic.

Present Conditions.—The importance of the mine and forest products and the undeveloped water powers of the United States has made the Secretary of the Interior a storm center around which revolve the conflicting currents of the conservation of these natural resources and the desire of settlers for a speedy development of the country. In this conflict the Secretary, with whom rests the decision of contests and the granting of permits, is called upon to formulate and carry out a policy satisfactory to both interests; and on his success or failure in dealing with this branch of his duties depends not alone his reputation, but also, in large and growing degree, the popularity of the administration of which he is a part.

See CABINET OF THE PRESIDENT; EXECUTIVE DEPARTMENTS; BUREAUS and OFFICES by name.

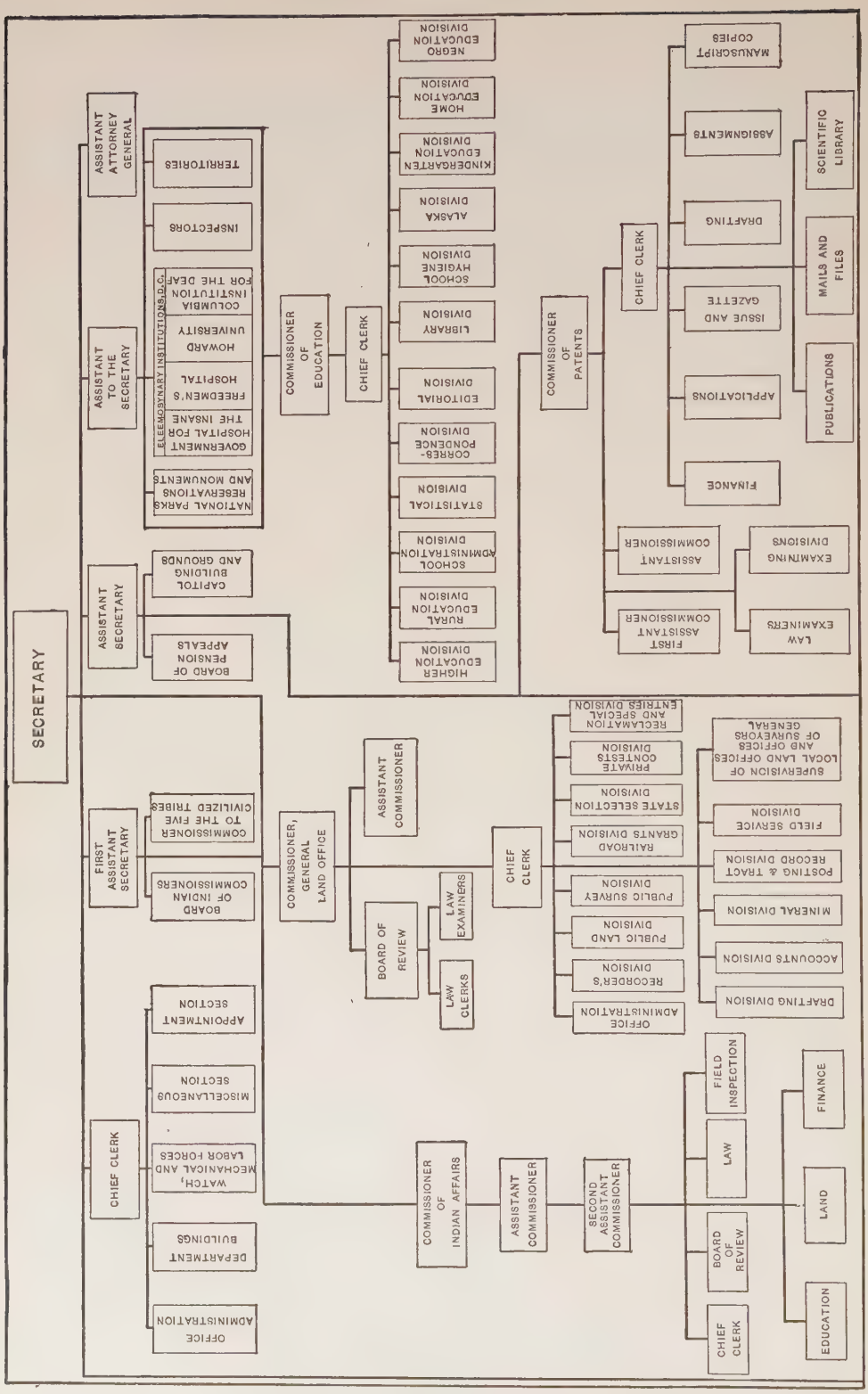
References: Sec. of the Interior, *Annual Report*, 1910; J. A. Fairlie, *National Administration of the U. S.* (1905); C. H. Van Tyne and W. G. Leland, *Guide to the Archives of the U. S.* (2d ed., 1907), 200–229; M. L. Hinsdale, *Hist. of President's Cabinet* (1911); H. B. Learned, *President's Cabinet* (1911).

CHARLES MOORE.

INTERIOR, SECRETARIES OF. Following is a list of the Secretaries of the Interior since the establishment of the Department in 1849:

1849 (Mar. 8)—1850 (July 22) Thomas Ewing.
1850 (July 23) Daniel C. Goddard (Chief Clerk; *ad int.*)
1850 (Aug. 15)—1850 (Aug. 26) Thomas M. T. McKennan.
1850 (Aug. 27) Daniel C. Goddard (Chief Clerk; *ad int.*)
1850 (Sept. 12)—1853 (Mar 7) Alexander H. H. Stuart.
1853 (Mar. 7)—1857 (Mar. 6) Robert McClelland.
1857 (Mar. 6)—1861 (Jan. 8) Jacob Thompson.
1861 (Jan. 10) Moses Kelly (Chief Clerk; *ad int.*)
1861 (Mar. 5)—1862 (Dec. 31) Caleb B. Smith.
1863 (Jan. 1) John P. Usher (Asst. Sec.; *ad int.*)
1863 (Jan. 8)—1865 (May 15) John P. Usher.
1865 (May 15)—1866 (Aug. 31) James Harlan.
1866 (Sept. 1)—1869 (Mar. 3) Orville H. Browning.
1869 (Mar. 4) William T. Otto (Assist. Sec.; *ad int.*)
1869 (Mar. 5)—1870 (Oct. 31) Jacob D. Cox.
1870 (Nov. 1)—1875 (Sept. 30) Columbus Delano (recommissioned, Dec. 8, 1870, Mar. 17, 1873).
1875 (Oct. 1) Benjamin R. Cowen (Asst. Sec.; *ad int.*)
1875 (Oct. 19)—1877 (Mar. 11) Zachariah Chandler (recommissioned, Dec. 9, 1875).
1877 (Mar. 12)—1881 (Mar. 5) Carl Schurz.
1881 (Mar. 5)—1882 (Apr. 6) Samuel J. Kirkwood.
1882 (Apr. 6)—1885 (Mar. 3) Henry M. Teller.
1885 (Mar. 4) Merritt L. Joslyn (Asst. Sec.; *ad int.*)
1885 (Mar. 6)—1888 (Jan. 10) L. Q. C. Lamar.
1888 (Jan. 11) Henry L. Muldrow (1st Asst. Sec.; *ad int.*)
1888 (Jan. 16)—1889 (Mar. 5) William F. Vilas.
1889 (Mar. 5)—1893 (Mar. 6) John W. Noble.
1893 (Mar. 6)—1896 (Aug. 31) Hoke Smith.
1896 (Sept. 1) John R. Reynolds (Asst. Sec.; *ad int.*)
1896 (Sept. 1)—1897 (Mar. 5) David R. Francis (recommissioned Jan. 18, 1897).
1897 (Mar. 5)—1898 (Dec. 21) Cornelius N. Bliss.
1898 (Dec. 21)—1907 (Mar. 4) Ethan A. Hitchcock (recommissioned, Mar. 5, 1901, Mar. 6, 1905).
1907 (Mar. 4)—1909 (Mar. 5) James R. Garfield.
1909 (Mar. 5)—1911 (Mar. 13) Richard A. Ballinger.
1911 (Mar. 13)—1913 (Mar. 4) Walter L. Fisher.
1913 (Mar. 5)—Franklin K. Lane.

See INTERIOR, DEPARTMENT OF; bureaus by name. References: M. L. Hinsdale, *Hist. of the President's Cabinet* (1911); H. B. Learned, *President's Cabinet* (1911). A. B. H.


SECRETARY
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BOARD OF PENSION APPEALS
CAPITOL BUILDING AND GROUNDS
ASSISTANT TO THE SECRETARY
NATIONAL PARKS RESERVATIONS AND MONUMENTS
GOVERNMENT HOSPITAL FOR THE INSANE
FREEDMEN'S HOSPITAL
HOWARD UNIVERSITY
COLUMBIA INSTITUTION FOR THE DEAF
ELEEMOSYNARY INSTITUTIONS D.C.
INSPECTORS
TERRITORIES
ASSISTANT ATTORNEY GENERAL
COMMISSIONER OF EDUCATION
CHIEF CLERK
HIGHER EDUCATION DIVISION
RURAL EDUCATION DIVISION
SCHOOL ADMINISTRATION DIVISION
CORRESPONDENCE DIVISION
STATISTICAL DIVISION
EDITORIAL DIVISION
LIBRARY DIVISION
SCHOOL HYGIENE DIVISION
ALASKA DIVISION
KINDERGARTEN EDUCATION DIVISION
HOME EDUCATION DIVISION
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LAW EXAMINERS
LAW CLERKS
BOARD OF REVIEW
FIRST ASSISTANT COMMISSIONER
SUPERVISION OF LOCAL LAND OFFICES AND OFFICES OF SURVEYORS GENERAL
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POSTING & TRACT RECORD DIVISION
MINERAL DIVISION
ACCOUNTS DIVISION
DRAFTING DIVISION
RECLAMATION AND SPECIAL ENTRIES DIVISION
PRIVATE CONTESTS DIVISION
STATE SELECTION DIVISION
RAILROAD GRANTS DIVISION
PUBLIC SURVEY DIVISION
PUBLIC LAND DIVISION
RECORDER'S DIVISION
OFFICE ADMINISTRATION
CHIEF CLERK
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BOARD OF INDIAN COMMISSIONERS
COMMISSIONER TO THE FIVE CIVILIZED TRIBES
FIRST ASSISTANT SECRETARY
APPOINTMENT SECTION
MISCELLANEOUS SECTION
WATCH, MECHANICAL AND LABOR FORCES
BUILDINGS
DEPARTMENT
OFFICE ADMINISTRATION
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COMMISSIONER OF INDIAN AFFAIRS
ASSISTANT COMMISSIONER
SECOND ASSISTANT COMMISSIONER
CHIEF CLERK
BOARD OF REVIEW
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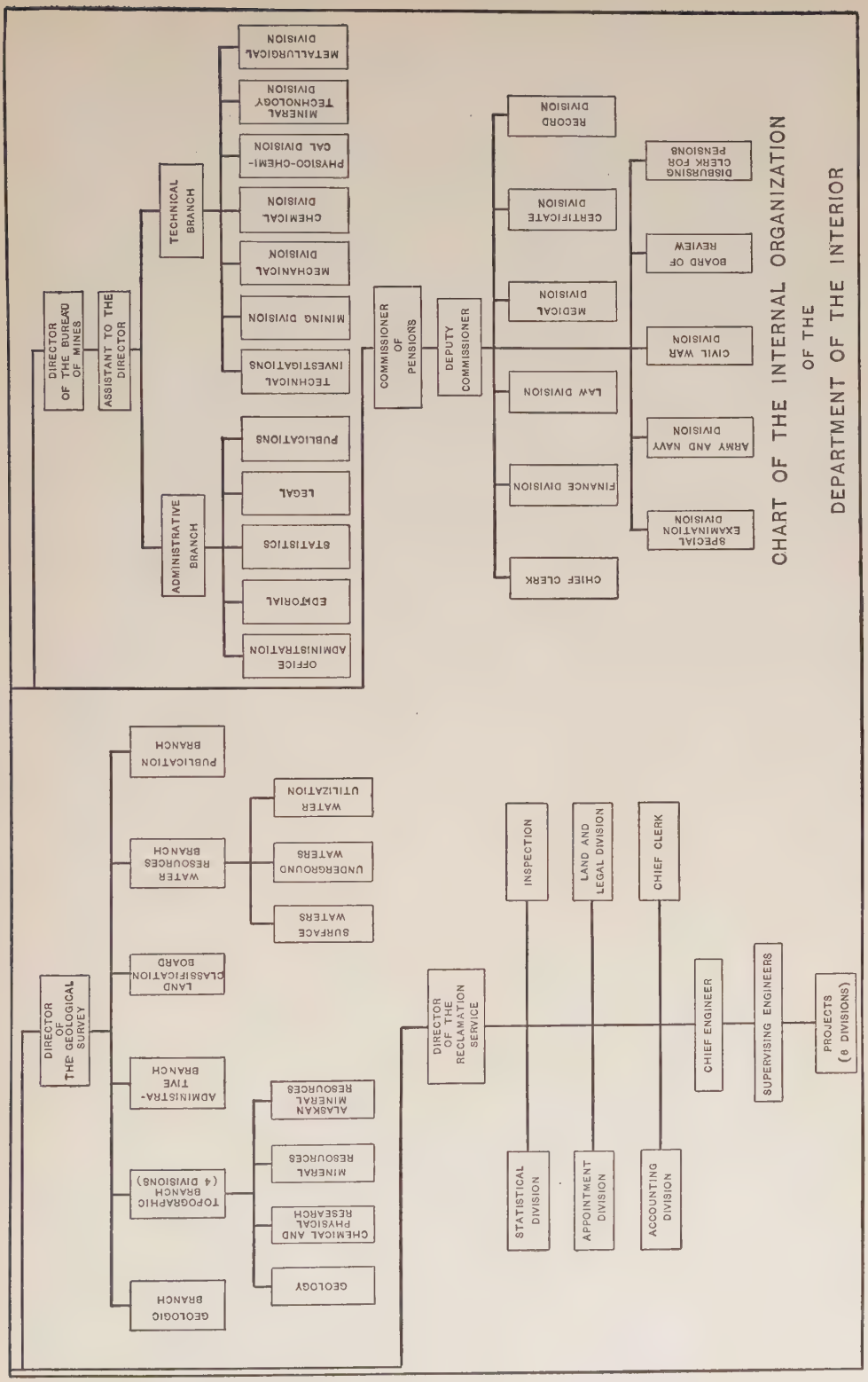
EDUCATION
LAND
FINANCE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TECHNICAL BRANCH
METALLURGICAL DIVISION
MINERAL TECHNOLOGY DIVISION
PHYSICO-CHEMICAL DIVISION
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MECHANICAL DIVISION
MINING DIVISION
TECHNICAL INVESTIGATIONS
ADMINISTRATIVE BRANCH
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FINANCE DIVISION
CHIEF CLERK
DISBURSING CLERK FOR PENSIONS
BOARD OF REVIEW
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WATER UTILIZATION
UNDERGROUND WATERS
SURFACE WATERS
LAND CLASSIFICATION BOARD
ADMINISTRATIVE BRANCH
TOPOGRAPHIC BRANCH (4 DIVISIONS)
ALASKAN MINERAL RESOURCES
MINERAL RESOURCES
CHEMICAL AND PHYSICAL RESEARCH
GEOLOGY
GEOLOGIC BRANCH
DIRECTOR OF THE RECLAMATION SERVICE
INSPECTION
LAND AND LEGAL DIVISION
CHIEF CLERK
CHIEF ENGINEER
SUPERVISING ENGINEERS
PROJECTS (8 DIVISIONS)
STATISTICAL DIVISION
APPOINTMENT DIVISION
ACCOUNTING DIVISION

INTERNAL IMPROVEMENTS, CONSTITUTIONAL STATUS OF. The power of Congress to construct internal improvements may be either an express or an implied power. If the former, the source is the "general welfare" clause of the Constitution (Art. I, Sec. viii, ¶¶ 1, 3, 7, 11), if the latter it is the power to regulate commerce, and establish post–roads, and the war power. Dismissing the idea that the "general welfare" clause was meant to comprise an indefinite substantive grant of power, the clause in question is then found to qualify in some way the financial powers of Congress; that is, it either directs them to the furtherance of the more specifically enumerated powers of the national government or adds to those powers the power to appropriate money generally for the "general welfare" (*see*).

Before 1800 the broadest view was taken of Congressional powers in the field of internal improvements. Subsequently, owing to the rise of the doctrine of the Virginia and Kentucky Resolutions (*see*), of the mediating function of the states between the people and the national government, the question of the scope of the power of Congress became involved with the question whether the consent of the state was necessary to the undertaking of such improvements and also with the collateral question whether such consent conferred jurisdiction over them. In 1806 Jefferson signed the Cumberland Road Bill. In 1808 Gallatin made his famous report, attributing to the national government the broadest reach of power to make internal improvements, but only with state consent. In 1817 Madison vetoed the Bonus Bill upon grounds greatly restricting the scope of national power. Five years later, however, in his veto of the Cumberland Road Bill of 1822, Monroe asserted the doctrine that Congress had the constitutional power to appropriate money for "all national objects," but that on the other hand, the national government could not assert jurisdiction over such improvements without a constitutional amendment. From 1829 on, strict construction again held sway and during the next three decades the doctrine that obtained was, generally speaking: first, that Congress in appropriating money furthered only its granted powers; and secondly, that state consent was a necessary prerequisite to internal improvements. Meantime, in McCulloch *vs.* Maryland (*see*), Marshall laid down the twin doctrines of the sovereignty of national government within the sphere of its delegated powers and of the paramountcy of national power over state power in case of conflict, the deduction from which is obviously the competence of the national government to construct internal improvements in furtherance of its granted powers without state consent. The court, under Taney, on the other hand, yielded a varying degree of assent to the principle of state mediumship.

Since the Civil War, the most notable undertaking of the national government in the field of internal improvements has been its participation, by virtue of its newly found "war power," in the construction of the Pacific Railway. This and allied enterprises have given rise to legal issues, in the determination of which it has fallen to the Supreme Court to pass authoritatively upon the scope of national power. The following utterances of the court may be selected as best summarizing the present law: (1) "Congress, under the power to regulate commerce, as well as to provide for postal accommodations and military exigencies," has power "to construct national highways." (2) "Such an authority . . . is essential to . . . the perpetuity of the United States and is not dependent upon the consent of the States." (3) "Whenever it becomes necessary for the accomplishment of any object" within its authority "to exercise the right of eminent domain, Congress may do this with or without a concurring act of the States in which the lands lie." These utterances need but a single word of comment; if Congress may exercise the power of eminent domain within the states without their consent it must also be able without state consent to assert jurisdiction over nationally constructed internal improvements to any extent, so long as the object subserved lie within the sphere of national power.

References: D. W. Brown, *The Commercial Power of Congress* (1910), 229–32, 241–68; T. D. Richardson, *Messages and Papers of the Presidents* (1896), *passim*, I, 584, II, 142, 483, V, 260–388; McCulloch *vs.* Maryland, (1819), 4 *Wheat.* 316; California *vs.* Pacific Ry. Co., (1888), 127 *U. S.* 1; Luxton *vs.* North River Co., 153 *U. S.* 529–530. E. S. Corwin.

INTERNAL REVENUE. See Revenue, Internal.

INTERNATIONAL CLAIMS. See Claims, International.

INTERNATIONAL CONGRESSES AND CONFERENCES. International conferences and congresses have been particularly common since the early days of the nineteenth century. International congresses were often thought to be more formal and their conclusions more binding than those of international conferences; but the distinction can scarcely be maintained from the survey of those which have been held. Both congresses and conferences are alike meetings of representatives of states for the settlement of matters in which they are interested.

Congress of Vienna.—The Congress of Vienna, September 22, 1814, to June 19, 1915, concluded the Treaty of Vienna of June 9, 1815, by which the relations of European states in chaos after the Napoleonic wars were adjusted. Other congresses upon the state of Europe fol-

lowed: Aix-la-Chappelle, 1818; Troppau and Laybach, 1821; Verona, 1822; London, 1829 and 1830; and many others relating more particularly to the political affairs of European states.

The desire to put an end to the slave trade had been mentioned at the Congress of Vienna in 1815 and again in 1822; the Congress of Vienna also considered the subject of free navigation of international rivers; but congresses and conferences on special subjects became especially common after the middle of the nineteenth century.

Social and Economic Congresses.—The names of some of these indicate a change in the attitude of the states of the world and a recognition that there may be many matters upon which the interests of the states are identical or sufficiently harmonious to permit of advantageous common action. The First International Sanitary Conference was held at Paris in 1851 and since that time nine similar conferences have been held; and in 1907 an international arrangement was entered upon for the establishment of the International Office of Public Health. In 1853 a Maritime Conference for the Adoption of a Uniform System of Meteorological Observations at Sea was held at Brussels; and a statistical conference was held at the same place in the same year. Among the early conferences having the most far reaching consequences was the conference of Paris on a postal union in 1863, which was followed in 1874 by the conference of Berne which established the permanent international postal bureau to which was added telephony in 1891 and which has been of such great service to civilization. In 1864 was held the First International Conference on Weights and Measures at Berlin. The Geneva Conference of 1864 which resulted in the "Red Cross Convention" revived in 1906, introduced more humane methods for the treatment of wounded and sick in time of war. Many monetary, telegraphic, customs and like conferences followed, showing the growing economic and commercial solidarity of the civilized world. Toward the end of the nineteenth century the increasing sense of social unity was evident in such conferences as that at Berne in 1889 to promote the well-being of the working classes. In most of these late congresses and conferences there is an evident intention to substitute international coöperation for international competition.

A series of international conferences since 1893 on private international law, so-called, have, by deliberation, done much to reduce the evils which arise from the conflict of laws of different states.

Pan American Congresses.—The conferences of American states following the Panama Congress of 1826 did not accomplish what their promoters had hoped. In 1889, however, a new impetus was given in the convening of the Pan American Conference at Washington on invitation of the government of the United States. The second Pan American Conference at Mexico in 1901–2; the third at Rio Janeiro in 1906; and the fourth at Buenos Aires in 1910 successively showed great advance in the mutual confidence and the practical nature of the work accomplished. Such matters as copyrights, trade-marks, patents, pecuniary claims, customs regulations, sanitary regulations, education were considered and upon many subjects important agreements were reached.

First Hague Conference.—The conferences which have marked the greatest progress in world wide community of interests in recent years are the International Peace Conferences at The Hague in 1899 and in 1907. The conference of 1899 was called on the initiative of the Czar of Russia whose minister, in a letter of August 24, 1898, suggested a conference on the "reduction of armaments." The representatives of twenty-six powers assembled and the conference was opened at The Hague on May 20, 1899. The conference adjourned on July 31, 1899. Many were disappointed in the results of its work and regarded the efforts for world-wide agreements on many of the matters submitted to the conference as visionary.

The Conference agreed upon one resolution, in favor of restriction and armaments; upon six desiderata (*vœux*); and upon three conventions—(1) pacific settlement of international disputes; (2) respecting the laws and customs of war on land; (3) adaptation of the principles of the Geneva Convention of 1864 to maritime warfare.

The conference adopted three declarations to prohibit: (1) discharge of projectiles and explosives from balloons; (2) use of projectiles for diffusing asphyxiating or deleterious gases; (3) use of bullets which expand or flatten easily in the human body.

The early pessimistic attitude toward the work of the Conference was gradually succeeded by a favorable attitude as the conventions were tested, particularly that for the pacific settlement of international disputes following the initiative of the United States and Mexico in submitting the Pius Fund Case (*see*) to the Hague tribunal in 1902.

Second Hague Conference.—On June 15, 1907, on the proposition of the President of the United States and on the invitation of the Czar of Russia the Second International Peace Conference (forty-four states being represented) was assembled at The Hague and adopted its Final Act, October 18, 1907. This Conference elaborated and supplemented and added to the work of the conference of 1899 and introduced propositions for an international prize court and for an international court of judicial arbitration. The effort to establish an international prize court was supplemented by the work of the International Naval Conference at London in 1908–1909.

The increasing frequency of international congresses and conferences, the broadening of their scope, the greater number of states participating, and evident willingness to accept the conclusions of the congresses and conferences as binding indicate the great progress that has been made and also the direction of further advance.

See BALANCE OF POWER; COMMERCE, INTERNATIONAL; DECLARATION OF PARIS; DISARMAMENT; HAGUE CONFERENCES; MARITIME WAR; PAN AMERICAN CONGRESSES; PRIVATEERS.

References: S. E. Baldwin, "Int. Congresses and Conferences" in *Am. Jour. Int. Law*, I, 1907, 565; A. P. Higgins, *The Hague Peace Conferences* (1909); J. B. Scott, *Peace Conferences at the Hague* (1908); P. S. Reinsch, "Int. Conference of Am. Republics" in *Am. Jour. of Int. Law*, IV, 1910, 777.

GEORGE G. WILSON.

INTERNATIONAL LAW, INFLUENCE OF THE UNITED STATES ON

The American continent, from the time of its discovery until the assertion of the Monroe Doctrine, was a prominent factor in the promotion of European wars to obtain or retain its possession. It is, therefore, peculiarly appropriate that the American continent, more especially the United States, should have contributed to the development of international law and to the consequent promotion of peace. In 1781, during the course of the American Revolution, Congress accepted international law "according to the general usages of Europe," and the Constitution vested Congress with the power "to define and punish . . . offenses against the law of nations" (Art. I, Sec. viii, ¶ 10), thus recognizing international law as binding upon the United States.

The influence of the United States upon international law is especially recognizable in the following fields: (1) the advocacy of immunity from capture of private property of the enemy at sea; (2) the doctrine of neutrality; (3) the doctrine of non-intervention as exemplified in the Monroe Doctrine; (4) expatriation; (5) codification of laws of war; (6) arbitration; (7) judicial settlement of international disputes.

Advocacy of Immunity from Capture of Private Property of the Enemy at Sea.—International law allows the private property of the enemy at sea to be captured and confiscated, a doctrine against which the United States has consistently protested since the days of the Confederation. It has followed the practice because other nations followed it, but it has expressed its willingness to renounce it. Thus, in 1785, the United States negotiated a treaty with Prussia which provides (Article 23) that in case of war between the two countries, "all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested." At the first Hague Conference, held in 1899, the American delegation presented a proposition to introduce into international law the doctrine of the immunity of private property of the enemy at sea; and although the proposal was not acted upon favorably, the American delegation, at the Second Hague Conference of 1907, reintroduced it, again without result. If war be a contest between states, it is difficult to see why innocent private property on the sea should be more severely treated than like property on land, although arms and ammunition may properly be captured. International theory is in favor of the doctrine; enlightened practice should accept it, and it is not unreasonable to believe that this favorite contention of the United States will ultimately prevail.

Doctrine of Neutrality.—The United States found itself in an embarrassing position during the early years of the wars of the French Revolution, for the sympathies of the people were largely with France, to which country they were bound by treaty. France attempted to enlist troops on American soil, to prosecute hostilities in American waters, to make American territory a base for fitting out vessels to prey upon British commerce, and even to establish prize courts upon American soil. On the other hand, Great Britain insisted that American citizens should not trade in contraband articles with her enemy. It was an arbitrary demand, contrary to the established rule that, so long as the belligerents are not discriminated against, citizens or subjects of a neutral state may sell or export articles of contraband, subject, however, to the right of the belligerent to capture and confiscate such articles when destined to the enemy. The American Government maintained that it was the right of every nation to prohibit acts of foreign sovereignty within its limits, and that it was the duty of a neutral to prohibit such acts as would injure one of the warring powers; that the neutral must in all things relating to the war observe an exact impartiality; that the right to raise troops was a right of sovereignty which no foreign power could exercise upon neutral soil, and that the United States was bound by the law of neutrality to prevent the arming of vessels and the raising of men within its territory; that is

to say, the duty of the neutral was positive, not merely negative as theretofore. As Hall says, in his treatise on International Law: "The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality."

Non-Intervention.—It may be questioned whether the right of intervention is a doctrine of international law. It has, however, often been the policy of nations. The formation of the Holy Alliance (*see*), and the practice of its members to intervene in internal affairs of European countries, was a grave danger to the smaller states of Europe and inconsistent with a rational and regular system of international law. The proposal of the allied sovereigns to extend their system to America, and to enable Spain to reassert its authority in Central and South America, would have transplanted an unacceptable European doctrine to America, and made the confusion resulting from intervention universal instead of local. The opposition of Great Britain and the United States to this proposed action was the occasion of the publication by President Monroe of the celebrated doctrine (*see* MONROE DOCTRINE) which bears his name. In his annual message to Congress, December 2, 1823, President Monroe stated that the American continent was no longer to be considered subject to colonization, and that the United States could not allow the extension of the political system of the allied powers to the South American republics in such a way as to oppress them or control their destiny. The doctrine was a protest, and has become the settled policy of the United States. It is not asserted that the doctrine as such forms a part of international law. It is maintained, however, that it prevented the European practice of intervention from invading and becoming incorporated in international law, and that its influence on international relations has been great and salutary.

Expatriation.—As appears from the article on allegiance (*see*), nations formerly claimed, and some still claim, the right to determine whether their citizens or subjects may emigrate, as well as to prescribe the conditions, if emigration be permitted. The vast extent of the United States, its comparative lack of population, and the opportunities offered to foreigners, started streams of emigration from European countries; and from the third decade of the nineteenth century large numbers of foreigners, landed upon our shores. As the result of the necessity of protecting its new citizens, the United States has proclaimed in theory, maintained in practice, and procured general acceptance of, the doctrine that it is the right of citizens or subjects to expatriate themselves and to obtain naturalization in foreign countries; although it is equally the right of the home countries to determine the conditions upon which their citizens or subjects may emigrate. The doctrine was first formally announced by Secretary of State Buchanan in 1848, was recognized by statute of the United States in 1868, and by treaty, usage, or custom, has now become accepted, at least in principle, by all the nations of Europe except Russia and Turkey.

Codification of Laws of War.—The need of a clear and precise statement of the rights and duties of nations is becoming daily more evident owing to the ever increasing intercourse of nations. There is a strong movement to systematize existing usage and custom and to present it in the form of a code. The first successful example of the codification of any branch of international law was made by Dr. Francis Lieber, Professor at Columbia University, who prepared, at the request of the United States, a codification of the laws of war, which was promulgated in 1863 by President Lincoln as General Orders No. 100. This code, due to the American Civil War, was the basis of the deliberations of the Brussels Conference of 1874 and of the convention concerning the laws and customs of war on land, adopted by the First Hague Conference in 1899. The success of Lieber's attempt to codify the laws of war led Bluntschli to publish, in 1868, his International Law in the form of a code, which was followed in 1872 by David Dudley Field's *Draft Outlines of an International Code* and in 1890 by the code of the Italian jurist, Fiore. In 1900 the United States published a naval war code under the title of *The Laws and Usages of War at Sea*, which proved a starting point for the partial codification of maritime international law produced by the Second Hague Conference, and for the Declaration of London (*see*) in the year 1907.

Arbitration.—That the American people are idealistic as well as practical is shown by their confession of faith in favor of arbitration and their success in securing its general adoption. Arbitration is not a discovery of the American people, but its successful operation is largely due to their initiative and persistent effort in its behalf; and it is perhaps no exaggeration to regard international arbitration as a contribution of the United States to the world at large. No nation can, however, arbitrate alone: coöperation is necessary, and it has been the other great branch of the English speaking people which has coöperated with the United States. The Jay Treaty (*see*) of 1794 between Great Britain and the United States laid the foundations of the modern system, and the submission by Great Britain and the United States of the Alabama claims (*see*) to the arbitration of the tribunal at Geneva was a demonstration of the fact that no question is too delicate, too large, or too important to be arbitrated, if only the parties in controversy wish to settle their differences by this method. In 1910 Great Britain and the United States again confessed their faith in the system

by submitting to arbitration at The Hague the Newfoundland Fisheries controversy (*see*) which had perplexed their foreign relations for a century and had at times threatened war. The statement is therefore justified that the English speaking world has made arbitration a real and effective means for the peaceful settlement of international disputes, and in this movement the leadership of the United States is incontestable (*see* ARBITRATION).

Judicial Settlement of International Disputes.—There is a wide-spread feeling that arbitration is synonymous with compromise, and that in practice it is but a continuation of the diplomatic methods of give and take. Indeed, the large discretion vested in an arbiter is frequently contrasted with the more restricted function of the judge. It would seem more reasonable that legal questions, that is, questions which may be settled by the application of principles of law, as also the interpretation and application of treaties, conventions, and international agreements, should properly be the subject of judicial determination, just as political questions and matters of national policy are the subject of discussion and mutual concession. Hence, while favoring arbitration, the United States has expressed itself in no uncertain terms in favor of an international tribunal to be composed of permanent judges who shall act under a sense of judicial responsibility. Secretary Root instructed the American delegation to the Second Hague Conference in 1907 (*see* HAGUE CONFERENCES) to propose and secure, if possible, the establishment of such a tribunal. The American delegation accordingly presented the proposal, in which Germany and Great Britain united, with the result that a draft convention was adopted by the conference providing for the organization, jurisdiction, and procedure of the tribunal (Court of Arbitral Justice). Unable to agree upon an acceptable method of selecting the judges, the conference recommended that the judges constituting the court should be appointed by agreement through diplomatic channels; and it is an open secret that the United States has endeavored to bring about such an agreement, and thus to secure the establishment of a truly permanent court of justice at The Hague. Should the movement succeed, which appears probable, the judicial settlement of international disputes will have been another contribution and not the least service of the United States to international law.

See ARBITRATIONS, AMERICAN; ASYLUM, INTERNATIONAL; DECLARATION OF PARIS; DIPLOMACY AND DIPLOMATIC USAGE; DRAGO DOCTRINE; EXPATRIATION; EXTRATERRITORIALITY; HAGUE CONFERENCES; IMPRESSMENT; INTERNATIONAL LAW, SOURCES OF; INTERVENTION; MARITIME WAR; MONROE DOCTRINE; NATIONALITY; NEUTRALITY, PRINCIPLES OF; TERRITORY IN INTERNATIONAL LAW; TREATIES IN INTERNATIONAL LAW; WAR, INTERNATIONAL RELATIONS OF.

References: J. B. Moore, Digest of *Int. Law* (1906); E. Nys "Les Etats-Unis et le Droit des Gens" in *Revue de Droit International et de Legislation Comparée*, XI (1909); *Am. Year Book 1910*, 87–90, *ibid, 1912*, 105, 106, 231.

JAMES BROWN SCOTT.

INTERNATIONAL LAW, PRINCIPLES OF

Formerly the existence of international law was sometimes denied. In the days of the evolution of the system of European states the status of international law was uncertain. For many years, however, international law has been respected as binding. States in their relations with one another have observed the principles of international law and domestic courts have administered international law.

Sanction.—The sanction of international law is to some degree the sanction which is behind municipal law. A survey of the field of international negotiation will show that states are continually striving to adjust their conduct so that it will conform to international law; that states pay without protest large sums for damages which conduct in contravention of the principles of international law may have involved; and that the effort to ascertain and abide by the principles of international law at the present time is greater than ever before. Elihu Root, in his address before the American Society of International Law, in 1908, said, "Why is it that nations are thus continually yielding to arguments with no apparent compulsion behind them, and before the force of such arguments abandoning purposes, modifying conduct, and giving redress for injuries? A careful consideration of this question seems to lead to the conclusion that the difference between municipal and international law, in respect of the existence of forces compelling obedience, is more apparent than real, and that there are sanctions for the enforcement of international law no less real and substantial than these which secure obedience to municipal law" (Am. Society of Int. Law, *Proceedings*, 1908, 16).

Public international law may now be said to be "a body of generally accepted principles governing relations among states" (Wilson, *Int. Law* 1910, 13).

Place in Constitutional Law.—The recognition of these principles by the United States was embodied in the Constitution which gives to Congress the power "to define and punish

offenses against the Law of Nations" (Art. I, Sec. viii). It was held by the Supreme Court of the United States in 1796 that the principles of international law were a part of the law of the United States from the beginning of its existence. The court said: "When the United States declared their independence, they were bound to receive the law of nations, in its modern state of purity and refinement." [Ware, Adm. of Jones *vs.* Hylton *et al.* (1796) 3 *Dallas* 199]. The principles of international law are binding for times of war as well as for times of peace as Chief Justice Marshall said in 1815: "The law of nations is the great source from which we derive those rules, respecting belligerent and neutral rights, which are recognized by all civilized and commercial states throughout Euorpe and America." [Thirty Hogsheads of Sugar *vs.* Boyle (1815) 9 *Cranch* 191].

The United States courts have always regarded international law and in decisions have repeatedly affirmed it as "a part of our law" which "must be ascertained and administered by the courts of justice" [Hilton *vs.* Guyot (1894) 159 *U. S.* 113]. Other states take a similar attitude toward international law. The Lord Chief Justice of England, Lord Alverstone, in 1905, said; "It is quite true that whatever has received the common consent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our national tribunals when legitimate occasion arises for those tribunals to decide question to which doctrines of international law may be relevant" [West R. and Central Gold Mining Company *vs.* Rex, L. R. (1905) 2 *K. B.* 39].

These principles of international law which are recognized as binding in the relations among states, cover not only the relations between state and state but also the relations of persons owing allegiance to one state who may be within the jurisdiction of another state, and cases involving the conflicting jurisdiction of different states in regard to private rights. This field of conflict of private rights, sometimes called "private international law" or "international private law," is generally regarded as more properly described by the term "Conflict of Laws."

Uncivilized Communities.—The principles of public international law have been at different periods considered as applicable to different communities in different degrees. In early days it was questioned whether uncivilized communities were entitled to any regard under international law, but it is now held that the treatment of such communities should accord with the principles of international law as far as possible.

Effect of Geographic Proximity.—The principles of international law rest upon the common needs of states which are necessarily brought into relations through the intercourse of their subjects, and because of the relations which arise from geographical proximity. It is natural that these principles should have developed in Europe where the boundaries of states were coterminous and where the subjects of one state were frequently within the jurisdiction of another.

Early Development.—The principles of international law did not receive much attention till the time of Grotius (1583–1645), (*see* POLITICAL THEORIES, ANCIENT AND MEDIÆVAL) in the seventeenth century. His great treatise, *De Jure Belli ac Pacis* (1625), formulated the principles many of which have since received more and more attention in the conduct of international affairs (*see* INTERNATIONAL LAW, SOURCES OF).

Some of the principles of international law, as Grotius himself shows in numerous quotations, had been recognized in very early practice among states. Some of the principles were those having foundation in the Roman law. The Amphyctionic League set forth principles in the dealings of the states with one another that show early recognition of rights of states. The oath of members of the league says: "We will not destroy any Amphyctionic town nor cut it off from running water, in war or peace; if anyone shall do this we will march against him and destroy his city." The league also agreed upon humane methods of warfare. Even the Egyptians observed law in some of their dealings with other political unities. The Law of Rhodes in regard to goods thrown over to lighten a ship in distress remains to the present day without much modification. Sanction for the inviolability of ambassadors is found in the relations of the earliest peoples.

The practices which history revealed or upon which concensus was found Grotius proposes to set forth saying he had "made use of the testimonies of philosophers, historians, poets, and in the last place, orators; not as if they were to be implicitly believed; for it is usual with them to serve their own sect, or the argument or cause they have undertaken; but that when many men of different times and places unanimously affirm the same thing for truth, this ought to be ascribed to a universal cause, which in the questions treated by us, can be no other than either an influence drawn directly from the principles of nature, or something established by common consent" [*De Jure Belli ac Pacis* (1625), Prolegomena, § 40].

Influence of Grotius and his Successors.—The conclusion reached by the early writers was that the state had the right to exist. The Grotian system of principles resting not merely on the theory of natural law was able to survive the criticisms of the successors of Grotius and many of these principles were of great weight in determining the clauses of the Treaty of Westphalia of 1648.

The principle of the freedom of the sea which had been set forth by Grotius in 1609 in his treatise, *Mare Liberum,* was bitterly opposed by Selden in 1635 in his treatise, *Mare Clausum.* The contention in regard to the principle of jurisdiction over the sea continued, but was much clarified by the principles enunciated by Bynkershoek in his treatise, *De Domino Maris,* in 1702 in which he proposed that the jurisdiction should extend so far as the effective range of cannon extends, at that time about three miles (*see* JURISDICTION OVER WATERS).

Equality of States.—Gradually the principles governing international relations began to be discussed in a broad manner and certain attributes were considered as belonging to states in their international relations. Before the Treaty of Utrecht in 1713, the principle of equality of states regardless of area or population had received considerable recognition (*see* STATES, EQUALITY OF).

The right of legation and the right of intercourse had begun to be recognized principles of international law. Permanent legations had been established and while there had been many controversies over precedence and diplomatic prerogatives the privilege of diplomatic representation was generally conceded.

The policy of the balance of power (*see* BALANCE OF POWER) particularly emphasized in the Treaty of Utrecht in 1713 had great influence during the eighteenth century and its maintenance in the nineteenth century became a common argument for the justification of intervention (*see* INTERVENTION). While the balance of power policy is not a principle of international law, it has had much influence in determining the development of international law.

Independence of States.—The balance of power idea and the doctrine of intervention particularly influenced the attitude toward the principle of independence. This attribute of the state was regarded as the one which must be most carefully respected by other states. The principle of independence of states equal before the law was regarded as fundamental as international law developed after the Treaty of Westphalia in 1648. Such a principle was, of course, inconsistent with the ideas of the Roman Empire of the earlier days and with the ideas of the Holy Roman Empire of the later days. Its application was also destructive of many of the cherished hopes of rulers who looked for an immediate realization of the world state idea. Many states sometimes spoken of as independent and granted a degree of freedom in international relations are independent in theory rather than in fact (*see* DEPENDENT STATES). In the case of states which are fully sovereign there are many restrictions upon the exercise of their sovereignty which they voluntarily assume under treaties and other agreements. The exercise of the right of independence by one state is also always conditioned by the right which other states have to exercise a similar right.

The voluntary restrictions upon the exercise of the right of independence vary greatly in character and extent. In 1886 Great Britain and Germany made an agreement respecting the exercise of their spheres of influence in the Pacific Ocean. The Hay-Pauncefote treaty of 1901 placed certain limits upon the freedom of the United States in regulating the use of the Panama Canal and put an end to certain rights which Great Britain had possessed under the Clayton-Bulwer Treaty of 1850. November 2, 1907, Norway undertakes in a treaty with Germany, Great Britain, France and Russia, "not to cede any portion of the territory of Norway to any power to hold on a title founded either on occupation or on any other ground whatsoever." The other powers in turn agree to "recognize and undertake to respect the integrity of Norway." The exercise of the right of independence is sometimes limited by agreements into which other states have entered without consulting the state whose power is thus curtailed. The great powers have repeatedly acted together in settling affairs of minor states in Europe, sometimes entirely disregarding the principle of independence in their agreements.

The principle of independence has been particularly recognized in the courts, and sovereigns as representatives of the personality of the state have been regarded as exempt from suit in foreign courts because this would in effect be a denial of independence [The Sapphire (1870), 11 *Wall.* 164]. The diplomatic agents as representing the state are also exempt from local jurisdiction.

Public Property.—The right of property in its domain has been regarded as a principle which each state has as an attribute of its statehood. "As a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence of every other sovereign state, each and every one declines to exercise, by means of any of its courts, any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to its public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory, and therefore, but for the common agreement, subject to its jurisdiction." [The Parlement Belge, *English Law Reports* (1878), 5 Probate Division 197.]

The right to public property rests in the sovereignty and passes with the sovereignty. Property may thus pass by treaty at the close of a war or by treaty of cession in time of peace. The joint resolution annexing Hawaii to the United States, approved by the President July 7, 1898, provided that, "Whereas the government of the Republic of Hawaii having in

due form signified its consent, in the manner provided by its Constitution, to cede, absolutely and without reserve, to the United States of America, all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, government, or crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the government of the Hawaiian Islands, together with every right and appurtenance thereto appertaining" (30 *United States Statutes* 750).

Territorial Domain.—Closely related to the right of property is the right of domain or the right of a state within the sphere of its sovereighty. Domain may be: (1) territorial or land domain; (2) maritime or fluvial; (3) aerial.

The principles in regard to territorial or land domain were developed earlier than those in regard to maritime or in regard to aerial domain. The earliest source of right to land domain was discovery and occupation. For America this principle was stated by the Supreme Court of the United States as follows:

> On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new by bestowing on them civilization and Christianity, in exchange for unlimited independence. But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle, which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession [Johnson *vs.* McIntosh (1823), 8 *Wheat.* 543].

When a state has long continued and uninterrupted possession of territory, the dominion is usually conceded as based on prescription.

Sometimes land is transferred as result of conquest or by formal cession at the close of war, or by cession through purchase, gift, exchange, or otherwise. By the treaty of 1898 with Spain the United States obtained dominion over the Philippines and other Spanish islands. The Supreme Court states this:

> By the third article of the treaty Spain ceded to the United States "the archipelago knows as the Philippine Islands," and the United States agreed to pay Spain the sum of $20,000,000 within three months. The treaty was ratified. Congress appropriated the money. The ratification was proclaimed. The treaty making power, the executive power, the legislative power, concurred in the completion of the transaction.
>
> The Philippines thereby ceased, in the language of the treaty, "to be Spanish." Ceasing to be Spanish, they ceased to be foreign country. They came under the complete and absolute sovereignity and dominion of the United States, and so became territory of the United States over which civil government could be etsablished. The result was the same, although there was no stipulation that the native inhabitants should be incorporated into the body politic, and none securing to them the right to choose their nationality. Their allegiance became due to the United States, and they became entitled to its protection [Fourteen Diamond Rings *vs.* United States (1901), 183 *U. S.* Sup. Ct. Rep. 176].

The land domain of a state may be changed through accretion in consequence of the action of water. While such changes may not involve large areas, the legal questions which sometimes arise are such as have received much attention, particularly when the accretion is in consequence of the action of rivers which form the boundaries between states. In a general way land formed by accretion is within the domain of the state to which it attaches.

Maritime Domain.—The maritime domain has generally been recognized as conferring a right to exercise certain rights of sovereignty in the high seas, to a distance of three marine miles from the low water mark. All rivers wholly within the boundaries of a state are subject to its jurisdiction. Boundary rivers in absence of conventional agreements are subject to the jurisdiction of the coriparian states. The boundary is for navigable rivers the middle of the channel and for lesser streams the middle of the river. Other inland waters, as lakes, are under the jurisdiction of the border states (*see* JURISDICTION OVER WATERS).

Aerial Domain.—The question of aerial domain has during the twentieth century become important. The discussions upon the subject have shown broadly three different theories in regard to aerial domain: (1) the airspace above the territory of a state is exclusively within the jurisdiction of the subjacent state and all entrance to this airspace may be prohibited; (2) the airspace above the state is free to all as the high seas; (3) the air space within a zone to a certain distance above of the state is exclusively within the jurisdiction of the subjacent state and above this zone is free to all. The drift of opinion seems to be in favor of the position that the air space above the area within which a state may exercise its jurisdiction is within the jurisdiction of the state but that the subjacent state should not prohibit the innocent use of this space but may regulate such use [Wilson, *Int. Law* (1910), 87–90, 120–124].

Status of Persons.—The exercise of jurisdiction over persons forms a subject which has large importance in the practice of international negotiations (*see* ALIEN; CITIZENSHIP IN INTERNATIONAL LAW; NATIONALITY). The nationals of a state owe allegiance to the state and are in general entitled to its protection. This protection can be exercised only in a limited measure when the national is within the limits of a foreign state (*see* PROTECTION OF CITIZENS ABROAD).

Adjustment of Disputes.—The principles of international law now extend to nearly all the possible relations which may arise among states and to nearly all matters to which a state may be directly or indirectly a party by reason of its relations to the property or person of nationals of a foreign state. With rapid development of arbitration, disputes involving different states have been more and more settled by pacific methods (*see* ARBITRATION AND PEACE; HAGUE CONFERENCES). The arbitral method while vastly more to be desired than war still is arbitral, and decisions seeming to have more regard to expediency than to the absolute justice of the claims have been rendered. The next step is that which will settle disputes between states by strictly judicial rather than arbitral methods without regard to expediency and with full regard to the principles of justice and equity, the principles upon which lasting settlements can be made.

Influence of the United States.—To the principles of international law, the United States has made many valuable contributions and its influence has been toward the establishment of justice in international dealings. In the Declaration of Independence of July 4, 1776, the "Thirteen United States of America," declare that, "a decent respect for the opinions of mankind requires that they should declare the causes which impel them to separation." The isolation of the United States in the early days of its history made freedom of action possible. In 1793 the United States set forth the principles of neutrality which have since come very generally to prevail. Of these rules Canning said, in 1823 "If I wished a guide in the system of neutrality, I should take that laid down by America in the days of the presidency of Washington and the secretaryship of Jefferson" (*see* NEUTRALITY, PRINCIPLES OF). The struggle for freedom of commerce and river navigation is shown in the American influence in abolishing the Danish Sound Dues in 1857, and the American protests against other restrictions upon navigation (*see* DANISH SOUND DUES). The "open door policy" in the Far East has more recently displayed the attitude of the United States in the advocacy of freedom from restraint. In the establishment of the laws of war, the United States has taken a leading position as is shown in the influence of its *Instructions for the Government of the Armies of the United States in the Field* in 1863, and its support of other liberal and humane policies such as the exemption of private property at sea (*see* WAR, INTERNATIONAL RELATIONS IN). The United States was the first state to bring a case before the International Court of Arbitration at The Hague in 1902; and other states gaining confidence thereby followed until the Court obtained the dignity and confidence of which it was worthy. The call for the Second Peace Conference at The Hague was instigated by the United States and many of the most important measures of the Conference of 1907 found in the American delegation warm supporters. That the principles of international law shall be founded on justice and shall prevail has been a marked characteristic of the influence of the United States from the time when its power began to be felt in the family of nations.

See ARBITRATION AND PEACE; CITIZENSHIP IN THE UNITED STATES; CLAIMS, INTERNATIONAL; COMMERCE, INTERNATIONAL; DIPLOMACY AND DIPLOMATIC USAGE; EXTRATERRITORIALITY; INTERNATIONAL CONGRESSES AND CONFERENCES; INTERNATIONAL LAW, INFLUENCE OF THE UNITED STATES ON; NEUTRALITY, PRINCIPLES OF.

Reference: J. B. Moore, *Digest of Int. Law*, I (1906), 1, 11. GEORGE G. WILSON.

INTERNATIONAL LAW, PRIVATE

Definition and Forms.—This subject embraces the body of rules observed by the courts in deciding cases in which it is alleged that the enforcement of the rights of the parties requires the application of a rule of foreign law. It is known by various titles, none of which has been universally accepted. The phrase private international law presupposes the existence of a body of rules obligatory upon or at any rate common to all nations and binding upon their courts, the word "private" indicating that the rules concern private rather than public legal relations. The phrase international private law is often used by those who wish to emphasize the idea that the rules are international not in any obligatory sense, but only in the sense that they are in fact applied with substantial uniformity by the courts in different countries, with the sanction of the local sovereign. The majority of American and English writers use the title "conflict of laws," implying that the divergence of rules produces a conflict for which there must be found a solution. Various other phrases have been suggested, such as "intermunicipal law," "extraterritorial effect of law," and "extraterritorial recognition of rights."

Conditions of Application.—Whether the difference be looked upon as a conflict or as a divergence, the foreign rule is said to be admitted and applied on the ground of comity (*see*). The conditions under which this principle must be invoked are various. Such a condition may, although it does not necessarily,

arise out of the alienage of one or of both of the parties, or out of the fact that the transaction took place abroad; or, while the transaction took place in one country, it may have been conducted under the law of another.

Perhaps several elements of this kind coexist, so that it is necessary to choose not only between a rule laid down in the law of the country in which the court sits (*lex fori*), the law of the forum and a foreign rule; but also between divergent rules in the law of two or more foreign countries. Another important element of divergence is that of personal capacity. Every person must derive a legal capacity to act from the law of some particular country. This is called his personal law (*lex personalis*), but the test which it applies is not in all countries the same. In some countries, as in Italy, it is nationality (*lex patriae*) or political allegiance; while in others, as in Great Britain and the British dominions and in the United States, it is domicil (*see*), which means residence in a place with an intent to remain there permanently.

Domicil.—The conflict between the *lex patriae* and the *lex domicilii* has given rise to the much controverted theory of *renvoi*, according to which, for example, a court in the United States, administering the movables of an American citizen who dies domiciled in Italy, should, because the Italian law adopts nationality as the test, consider the distribution as having been sent back by that law to be determined in conformity with the law of the state in which the deceased formerly resided.

In the United States and Great Britain, because of the divisions of political authority, domicil may be treated in the threefold sense of: (1) national domicil, or domicil with reference to an independent country; (2) quasi-national domicil, or domicil in a state of the Union or in one of the British colonies or dominions; (3) municipal domicil, or domicil in a smaller political subdivision. The term "commercial domicil" has sometimes been used by the courts in a vague and uncertain sense, but it has no proper place outside of prize law. "Residence," "habitancy," and "citizenship" are all more or less employed in statutes and by the courts in the sense of domicil.

The question of domicil is specially important not only as affecting personal capacity, *e. g.*, to marry, to enter into marriage settlements, and to contract generally, but also as affecting taxation, jurisdiction, succession to movables, the administration of estates, and the rights of married women and minors. By the common law the validity of a marriage was determined by the law of the place where the ceremony was performed, and this was carried so far as to include the question of the capacity of the parties to marry; but in certain recent decisions, particularly in England, the personal law of the parties has to some extent been recognized as the test of capacity.

Jurisdiction.—Questions of jurisdiction are of fundamental importance. A foreign sovereign and his property are exempt from judicial process, and this immunity extends to the persons and property of his diplomatic agents. The determination of titles to real property belongs to the courts of the territorial sovereign; but a court of equity may, for the purpose of securing the execution of a contract or a trust, or of preventing fraud, or in the case of a railway in more than one jurisdiction, or on the ground of domicil within the jurisdiction, compel a party before it to take certain action in regard to foreign immovables.

Criminal Proceedings.—The courts of one country will not enforce penal sentences pronounced by the courts of another country, nor does a foreign conviction of an infamous offence disqualify a witness, although such conviction may be proved to impeach his credibility. As between the states of the United States the question whether a law is penal depends upon whether its purpose is to punish an offence against public justice or to afford a private remedy to a person injured by a wrongful act. A state or country has jurisdiction of criminal acts committed within it by persons outside, on the ground that the offence may be considered as having been committed where the act takes effect.

Civil Proceedings.—In civil matters, the courts of a country are usually open to all suitors, in proceedings either against the person (*in personam*) or against a thing (*in rem*). Personal actions of a transitory nature may be brought within any jurisdiction in which the defendant is found. A cause of action is transitory when it might have arisen anywhere; it is local if it could have arisen only in one place. It is essential to jurisdiction in actions *in personam* that the defendant should have been served with process within the territory or that he should have voluntarily appeared; and this rule applies to actions against a foreign corporation. But personal service is unnecessary if the defendant is domiciled in the state or if the action is essentially *in rem*. The form of action *in rem* is most extensively employed in maritime and customs cases.

The question of jurisdiction is also material in divorce proceedings, the rule being that at least one of the parties must be domiciled within the state or country. While in general the domicil of the wife follows that of the husband, a wife may have a separate domicil for purposes of divorce, although she cannot gain it by her own wrong.

One of the most important features of private international law is that relating to matters of administration and succession. This does not affect realty, the inheritance of which is always governed by the local law. If a person dies leaving personalty or movables in several states or countries, administration

must, in order to be in all respects effective, be taken out in each of such countries, the principal administration being that of the place of the deceased person's last domicil. If a person dies leaving no will, the succession to his movables is determined by the same law. Unlike an executor or administrator, the receiver of a bankrupt may sue for the recovery of the assets of the estate in a country other than that of his appointment without obtaining local authority therefor.

Enforcement of Judgments.—It often happens that a judgment recovered in one country is sought to be enforced in another. In the United States a judgment is considered as "foreign:" (1) if rendered by a court of a foreign country; or (2) if rendered by a court in a state or territory of the United States other than that in which it is sought to be enforced. In the first case, the effect to be given to the judgment depends upon general principles of law, the provisions of the Federal Constitution and the legislation of Congress. In neither case does the foreign judgment operate directly, but is enforced by means of a suit brought upon it.

Where foreign judgments do not affect matters of local policy, it has generally been held in England and the United States that they are conclusive as to the merits of the controversy, unless it can be shown that the proceeding was tainted with fraud. The force of this rule was impaired by a decision of the Supreme Court of the United States in 1895 to the effect that a judgment was to be considered as only *prima facie* evidence of the justice of the plaintiff's claim, where this was shown to be the rule as to the effect of foreign judgments in the country in which the judgment was rendered.

Interstate Judgments and Records.—As between the states of the United States the regulation of the matter is affected by the provision of the Constitution (Art. IV, Sec. i) that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. Under this clause and the federal statutes, records and judicial proceedings are entitled in every court in the United States to the same faith and credit as they have by law or usage in the courts of the state or territory from which they are taken.

These provisions do not apply to judgments for the enforcement of fines or penalties, or in regard to questions of inheritance. Moreover, the question whether the court by which the judgment was rendered had jurisdiction of the parties and the subject-matter is always open to examination, jurisdiction being essential to the rendering of a judgment.

This condition is peculiarly applicable to judgments of divorce; nor have such judgments international or interstate validity unless at least one of the parties was domiciled within the jurisdiction. Personal disabilities imposed by a decree of divorce, such as the disqualification of the guilty party to marry again, being penal in their nature, do not operate extraterritorially; but a decree for alimony granted in one state may be enforced in another.

Bankruptcy.—An assignment under the bankruptcy law of a foreign country has of itself no extraterritorial force; but the title of the foreign assignee to movables may be asserted by him in the courts, subject to the claims of domestic creditors and the rules of public policy. A discharge in bankruptcy under the law of a foreign country has of itself no force in the United States; but the reorganization of a foreign railway corporation, under the authority of an act of the legislature of the country to which it belonged and with the assent of a majority of the holders of its bonds and stock, was held to be binding on citizens of the United States who had not assented.

Corporations.—Subject to proper local regulation, a corporation created by one sovereignty is permitted to make contracts in another and to sue and be sued in its courts. In respect of the enforcement of the personal liability of a resident stockholder of a foreign corporation it is held: (1) if such liability rests in contract merely, it will be enforced everywhere; (2) if it grows out of a statute of the state to which the corporation belongs, its enforcement will generally be conceded if the liability is in its nature contractual; (3) its enforcement will not be conceded if the statute is in its nature penal.

Family Relations.—Private international law is also concerned with family relations, including those of guardian and ward, and legitimacy.

Movables.—Movables have a situs at the place of the owner's domicil for purposes of taxation as well as for other purposes, on the theory that they follow the owner's person (*mobilia personam sequuntur*). This principle applies to a voluntary assignment of movables for the benefit of creditors. But, with the great increase in the quantity and dispersion of movables, they have come to be considered more and more as having a situs apart from the domicil of their owner, and to be subject to the law of such situs (*lex situs*), under which the courts may refuse to enforce the assignment as against domestic creditors or upon other grounds of interest or of policy.

Contracts.—With respect to contracts the following rules are observed: the mode of their execution or solemnization is subject to the law of the place where such execution or solemnization occurs (*lex actus*); their essential validity is governed by the law with a view to which they were made, and this, in matters of performance, is the law of the place of performance (*lex loci solutionis*); their interpretation is governed by the law which the parties

had or may be presumed to have had in view in making them.

Procedure.—Procedure, which includes forms of suit and of process, matters of pleading, questions of costs, and the kind and amount of evidence necessary to prove a cause of action, is governed by the *lex fori*. So with the limitation of actions; but, if the statute in force where the cause of action arose extinguishes the debt or obligation and does not merely bar the remedy, it governs. The rule that the *lex fori* governs in matters of limitation has in some jurisdictions been modified by statute. Courts are not bound to take judicial notice of foreign laws, which must be proved as facts. Actions for damages for torts (civil injuries) to person or to property, being considered as transitory, may generally be maintained in any jurisdiction in which the defendant can be legally served with process, provided the act also constitutes an actionable wrong by the *lex fori;* but, as between the States of the United States, this rule has to a certain extent been relaxed.

Personal Injuries.—By the common law an action for damages for personal injury died with the plaintiff. In time statutes were adopted in England and in the United States by which the right of action in such case survived to the personal representatives of the deceased. In the United States these statutes were in the first instance held to be penal in their nature. This view was soon abandoned in favor of the rule that the action might be maintained if there existed a similar statute in the state in which the action was brought; and later the courts went further and held that the action might be maintained even though there was no similar statute in the state in which the action was brought.

See COMITY, INTERNATIONAL AND INTERSTATE; EXPATRIATION; EXTRADITION, INTERNATIONAL; INDIVIDUALISM, THEORY OF; INTERNATIONAL LAW, PRINCIPLES OF; LEX FORI; NATIONALITY; PROTECTION TO AMERICAN CITIZENS ABROAD.

References: J. Story, *Conflict of Laws* (1883); F. Wharton, *Conflict of Laws* (1905); J. Westlake, *Private International Law* (1912); A. V. Dicey, *Conflict of Laws* (1908); F. Meili, *International, Civil and Commercial Law* (Kuhn's translation, 1905); *Am. Year Book, 1911*, 149, and year by year.

JOHN BASSETT MOORE.

INTERNATIONAL LAW, SOURCES OF

The idea of "sources" in connection with international law has been differently understood by writers upon the subject, many of whom fail to distinguish between the evidences of international law and the historical facts which have given rise to its rules. Other writers appear to confound with "sources" the idea of "causes," *i. e.*, the more or less remote influences which have brought about the adoption of certain rules.

Usage.—Considering international law as a body of rules actually accepted by nations as regulating their mutual relations, it follows that the consent of nations to abide by a given rule is essential to the admittance of that rule into the body of international law. Usage is the chief fact in which that consent is embodied, and it is thus the chief source of international law. It postulates the implied consent of the nations which abide by it. It originates in the free practice of individual nations. In time other nations are led, for reasons of personal convenience or under stress of moral compulsion from their stronger neighbors, to adopt the same practice. Gradually long usage hardens into custom and comes to be regarded as binding upon the parties to it. There is thus formed a body of customary law which constitutes by far the more important part of international law.

An instance of the growth of international usage into fixed custom is to be found in the history of the development of maritime law. The *Rhodian Laws* became the basis of a body of international maritime usages beginning as far back as the eighth century. Later codes of maritime law, the *Tabula Amalfitana*, the *Laws of Oléron*, and notably the *Consolato del Mare*, a collection of rules and customs made in the fourteenth century, show that usage was gradually becoming more fixed. The ultimate force attained by the usages of maritime intercourse is thus expressed by Justice Strong in the case of the Scotia [81 *U. S.* 170 (1871)]: "Undoubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities." The breaking up of the Empire of Charlemagne and the development of independent states resulted in the unconscious growth of usages which gave expression to the fundamental facts of state existence, such as the sovereignty of a state within its own domain; and to the fundamental moral principles involved in international intercourse, such as the sanctity of treaty obligations. By the time of the Treaty of Westphalia in 1648, these usages had hardened into fixed custom. Usages relating to the conduct of war developed more slowly, but have now become in large part codified by the conventions of the two Hague Conferences. Of usages based upon

international convenience, some have become law, while others, by reason of their limited application or their uncertainty, are still law in the making.

Treaties.—As usage is the older and original source of international law, so treaties are the later source. Strictly speaking, only such treaties as are entered into by the whole family of nations, and which enact new rules of international conduct, can be considered as sources of international law. Treaties entered into between two or more nations constitute what may be called either particular or general international law, according to the number and importance of the parties to them. They form the basis of a custom which may in time become universal from the adoption of it by other nations, and may thus come to constitute international law in its strict sense. There are, indeed, special cases in which the adhesion of other nations to a treaty concluded between two or more states gives to the original treaty the character of a true source of international law.

Since the First Hague Conference of 1899 (*see* HAGUE CONFERENCES), international treaties, in which the whole family of nations finds representation, have become an increasingly important source of international law. At that conference important agreements were entered into which gave universal application to certain existing usages of limited practice, abolished certain others, prescribed new rules of international conduct, defined rights, and imposed definite obligations. The Hague Conference of 1907 legislated upon a more extensive scale, and it is not improbable that future conferences will in time draw up a code covering the entire field of international relations.

It is important, however, to note that the condition appended to such conventions as those adopted at the First and Second Hague Conferences, to the effect that the particular convention may be at any time denounced by the parties to it upon due notice, gives to these conventions rather the character of a temporary code of international law. It is only when the rules stipulated for in such conventions have so grown into custom that the right of denunciation by a given nation may be regarded as abandoned, that the conventions can rank in importance with the long established rules of customary law.

Publicists.—Most of the older writers on international law, and not a few writers of the present day, consider as "sources" of international law the influences which have brought about its development, and moreover, many also include as "sources" facts which are merely the evidence of the existence of an international custom. The most prominent of these influences and evidences are: the works of famous writers on international law; the decisions of national prize courts; and treaties of a law-making character, either between two nations or between a limited number of nations, or between the great powers as a body.

The works of text writers of authority, beginning with the publication in 1625 of the great work of Grotius, *De Jure Belli et Pacis*, have greatly aided in the development of international law. They may be considered, first, as testimony to the existence of international custom, and with this object they are often quoted by judicial tribunals. Mr. Justice Gray, in rendering the opinion of the court in the case of "The Paquete Habana" (175 *U. S.* 677) said:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.

Secondly, the opinions of such writers, by their influence upon the executive, legislative, or judicial departments of the government, are often of great weight in determining the individual conduct of a nation, and they thus lay the basis of a practice which may in time become general, and finally obtain the binding force of fixed custom.

The theory of the Grotian school that international law gives expression to an absolute right possessed by a nation independently of the acknowledgment of that right by other nations, and more particularly the theory of the "naturalist" school of Pufendorf, denying the legal force of a law of nations based upon treaty and custom, naturally led the writers of those schools to make clear and definite statements of the general moral principles involved in international relations. If at the same time those writers fail to examine critically the actual state of the law and to distinguish between what is the law and what should be the law, it is doubtless true that the principles advocated in their works have frequently played the part of real sources of law, because of the judicial assumption that nations would not deviate in practice from them.

Court Decisions.—The decisions of national prize-courts, and of other municipal courts in cases involving international relations, while pretending to apply and give effect to international law, frequently express the interpretation put upon international custom by their government, and in many cases do no more than set forth the ideas of their government as to what should be the rules of international conduct. They operate to render stable the practice of their own country and thus contribute to the adoption of that practice by other nations. In the case of Bentzon *vs.* Boyle

[9 *Cr.* 131 (1815)], Chief Justice Marshall said: "The decisions of the courts of every country show how the law of nations, in the given case, is understood in that country, and will be considered in adopting the rule which is to prevail in this." The decisions of Sir William Scott, in the English High Court of Admiralty, have had a most important influence in the development of the law regulating the conflicting rights of neutrals and belligerents in time of maritime war.

Treaties between a few nations only, by which the parties bind themselves to adopt a given rule in their international relations, can be regarded as factors in the development of international law in so far as they have influenced other nations to adopt the same rule and thus to establish a general usage which later develops into custom. Of this character was the Declaration of Armed Neutrality (*see*) issued by Russia in 1780 and immediately adhered to by Sweden and Denmark, the object of which was to check the excessive pretensions of England to restrict neutral trade with her enemies. Other countries acceded to the declaration in the course of the following year, and the principles set forth in it finally became the accepted rule.

What has been said of treaties between a few nations only is particularly true when all or a majority of the great powers are parties to the treaty. The authority of such treaties has generally imposed itself upon nations not parties to them. Moreover, when it is expressly stated in the treaty that nations not parties to it are invited to adhere to it, the actual adherence of other nations may constitute the original treaty a true source of international law. An important example of such a treaty is the Declaration of Paris (*see*) of 1856, signed by Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey. The four rules with regard to maritime warfare which were formulated by it have, by the subsequent adhesion of eighteen other states, entered practically into the code of international law, as is shown by the fact that the United States, though for particular reasons not a party to the declaration, announced that it would abide by the declaration in carrying on its war with Spain in 1898.

Arbitral Decisions.—The decisions of arbitral courts, while undoubtedly of great weight in determining the future practice of the nations that are parties to the case, and frequently of weight in causing the adoption by other nations of the rule embodied in the decision, have not in any way the authority of an expression of settled principles of international law. It is only when such a principle asserted by an arbitral tribunal has in time become invested with the force of international custom that it can be regarded as international law. Thus the three rules relating to the duties of a neutral, set forth in the Treaty of Washington, and applied by the Geneva Arbitration Tribunal (*see*) in 1871, while not formally accepted by the other powers, exercised great influence in causing the adoption at The Hague in 1907 of several articles of the convention respecting the rights and duties of neutrals in maritime warfare.

See Diplomacy and Diplomatic Usage; International Law, Influence of the United States on; International Law, Principles of; International Law, Private; Jurisprudence; Law, Constitutional, American; Monroe Doctrine; Neutrality, Principles of; Treaties in International Law; War, International Relations of.

References: H. Wheaton, *Hist. of Int. Law* (1845); L. Oppenheim, "Science of Int. Law: its Task and Methods" in *Am. Jour. of Int. Law* (1908), II, 313–356; H. W. Halleck, *Int. Law* (1861), 53, 63; J. B. Moore, *Digest of Int. Law* (1906), I, §§ 1, 2, *Hist. and Digest of Int. Arbitrations* (1896); W. M. Malloy, *Treaties and Conventions of the U. S.* (1910); *Am. Year Book, 1911*, 149, and year by year; bibliography in A. B. Hart, *Foundations of Am. For. Policy* (1905), ch. viii; C. Calvo, *Le Droit International Theorique et Pratique* (1896), VI, 29–41; F. de Holzendorff et A. Rivier, *Introduction au Droit res Gens* (1889), 79–147, 351–494. Charles G. Fenwick.

INTERNATIONAL LAW, TREATIES IN. See Treaties in International Law.

INTERNATIONAL UNIONS

Occasions.—World union in the broadest political sense is still an ideal which arouses enthusiasm but possesses little content for the practical man of affairs. Because of its disregard of nationalism and all the bonds that hold men together in special interest groups, the old internationalism remains a "bright star which we shall never reach though it always guides us."

But the growing intelligence of the world and the increasing ease of communication are breaking down at particular points the old prejudices that looked on all foreigners as barbarians. Private and public interests cross national boundaries and are creating a host of international unions by which the life of all countries is becoming institutionalized. In contrast to the old pacifism which was purely negative these new unions are positive forces in our public life. They emphasize the common interests of mankind; world unity is brought into its relations with actual facts. Instead of

the world embracing internationalism of the eighteenth century, the dominating factors of the new world organizations are the concrete practical advantages to be reaped by social, economic and political coöperation.

Number.—International organization is a reality. There are over one hundred and fifty international unions composed of private individuals with permanent organizations for the advancement of industry, commerce, or science. Governments have recognized the necessity of coöperation in activities which can not well be controlled by private organizations. There are almost fifty of these public international unions composed of states; of these, thirty possess administrative bureaux or commissions.

Significance.—Any state which wishes to make the most of its position in the world is compelled to international coöperation. It must avail itself of the privileges of the world community, and it must bear its obligations. As this community of interests increases, the incentive to war must decrease. International unions become, thus, one of the most important constructive agencies in the development of international law and the maintenance of peace.

Purposes.—The causes which have worked for the formation of international unions are largely economic. The development of transportation has forced uniformity of regulations for freight transfer and postal and telegraph services. In industry and other economic enterprises the adoption of an advanced standard by one country has made those within its borders whose interests were affected anxious for the extending of the same standard by treaties to other countries, in order that the basis of fair international competition may be maintained. Thus developed the international unions affecting agriculture, labor, sugar production and other economic activities. Guarding the public health forced a third sort of coöperation—for the improvement of sanitation and the prevention of importation of contagious diseases. Finally, there are unions the interests of which are of a more general character covering a large group of subjects upon which states have found it necessary or advisable to secure united action.

Basis of Interests.—The growth of these international agencies has brought into existence a large body of rules found in treaties or less formal agreements. By them our idea of international law is being modified; we no longer think of it only as an outgrowth of the philosophy of natural law but we see that it is rapidly coming to be law enacted from the point of view of international relations, it is becoming less a work of the intellect and more the concrete expression of interests and activities already developed in the life of the world. Common interest rather than logic alone is coming to be the force that works for homogeneous development, uniformity and simplicity in the rules of international relations.

Sanction.—The common interest, too, furnishes not only the incentive toward the forming of organizations for the common international benefit, but it makes possible, also, a sanction enforceable against any state which is delinquent in its duties. The real sanction in international administrative law lies in the eventual exclusion of the delinquent state from the privileges of the union. The sanction will not always be of equal force, but in some of the unions it is amply sufficient to secure careful observance of treaty obligations. The privileges of the union may be so important to the economic life of the state that exclusion from membership would be a penalty to be avoided by all possible means.

Effect on Nationalism.—So strong may the international consciousness become indeed that we may have indirectly a decrease of the importance of the national ideal. The gradual increase of international economic, political and social interests may reduce the enthusiasm formerly lavished on the smaller unit. National sovereignty would become blended in the larger interests which the state and the individual would have acquired in world affairs. Such a development, if it ever comes, must come, if we are to judge by present developments, not by the former enthusiasm for an abstract cosmopolitanism but from the fact that individual and national interests will outgrow national boundaries. International unions giving expression to the wider interests of mankind are one of the instruments by which that development is made possible.

Principal Unions.—The extent to which the life of the world is already institutionalized is indicated by the wide scope of the activities of the more important international unions:

I. COMMUNICATION.

The Telegraphic Union.
The Universal Postal Union.
The International Union of Railway Freight Transportation.
Automobile Conference.
The Permanent International Association of Navigation Congresses.

II. ECONOMIC INTERESTS.

The Metric Union.
Union for the Publication of Customs Tariffs.
The Sugar Convention.
Conventions for Protection of Industrial and Literary Property.
Conventions for the Protection of Labor.

III. SANITATION AND PRISON REFORM.

The International Prison Congress.
International Sanitation.
Pan American Sanitary Union.
The International Opium Commission.
The Geneva Commission.

IV. CONVENTIONS RELATING TO POLICE POWERS.

Fisheries Police.
Protection of Submarine Cables.
African Slave Trade and Liquor Traffic.
Repression of the White-Slave Trade.
The South American Police Convention.

V. CONVENTIONS FOR SCIENTIFIC PURPOSES.

The International Geodetic Association.
The International Electrotechnical Commission.
The Seismological Union.
Exploration of the Sea.
The Pan American Scientific Congress.

Of a wider character and more general influence are: (1) The International Union of American Republics, the purposes of which are the promotion of general American interests. Unlike most of the other Unions its membership as its title indicates is geographically limited. (2) The general international union represented by the Hague Conferences and the judicial bodies created through their actions.

See Armed Neutrality; Comity, International and Interstate; Commerce, International; Declaration of Paris; Disarmament; Extraterritoriality; Hague Conferences; International Congresses and Conferences; Isolation Policy; Maritime War; Navigation of International Rivers; Open Door; Pan American Congresses; Postal Union.

References: P. S. Reinsch, *Public International Unions* (1911), detailed bibliographies of the unions; L. Poinsard, *Le droit International au XXme Siecle* (1907); P. Kananski, *General Administrative Unions of States* (in Russian, 1897), "Die allgemeinen Staatenvereine" in *Jahrbuch der int. Vereingung* VI (1904); W. Schucking, "L'organisation internationale" in *Revue Generale de Droit*, XV (1908), 5.

Chester L. Jones.

INTERNATIONAL WORKINGMEN'S ASSOCIATION (AMERICAN). This organization, established in America in 1881, is to be distinguished from both the European organization of the same name (*see*) and the International Working Peoples' Association (I. W. P. A.) The membership of the I. W. A. lay chiefly west of the Mississippi, and largely on the Pacific coast and was made up, for the most part, of English speaking American workingmen and farmers. They complained of the abuses of political parties, the manipulation of primaries, caucuses, and elections, the use of money, and of the baleful influence of "priest, press and politician," in preventing the people from electing honest representatives, and because no means existed by which the people could punish or recall unfaithful public servants. They declared for a system of coöperative society as a means of justice to all. The association was organized in "groups," and in 1887, it enrolled about 6,000 members, when union was attempted with the Socialist Labor party (*see*). While no fusion was formally declared the membership of the association was gradually absorbed into the larger body of the Socialists and the separate organization soon disappeared. See Labor Parties; Socialism. **References:** R. T. Ely, *Labor Movement in America* (3d ed., 1905), ch. ix; M. Hillquit, *Hist. of Socialism in the United States* (1903), 253–255.

J. A. W.

INTERNATIONAL WORKINGMEN'S ASSOCIATION (EUROPEAN). This society was organized in London in 1864. Its declaration of principles was drawn by Karl Marx, the founder of modern socialism (*see*). The various national labor organizations were to affiliate with the international in a general council of delegates forming an association of workingmen of the progressive countries (England, Germany, France, Italy, Poland, Switzerland) to demonstrate the international character of the socialist movement. Its active life was chiefly between 1866 and 1876, during which period it held six international congresses. In 1872, the seat of the council was moved from London to New York. This association exercised influence on the labor movement in the United States chiefly through the influence of those of its members, who, upon coming into America, became members of "sections" or societies affiliated with the international and, also, by becoming members of the "American Labor Union." A national convention was held on July 6, 1872, in New York which assumed the official name "North American Federation of the International Workingmen's Association." See Labor Parties. **References:** M. Hillquit, *Hist. of Socialism in the United States* (1903), 175–183; R. T. Ely, *The Labor Movement* (3d ed., 1905), ch. ix.

J. A. W.

INTERPARLIAMENTARY UNION. A society organized in 1888 by Randal Cremer and Fréderic Passy, and composed of members of national parliaments, having for its object the amelioration of international relations through the influence of its members in securing proper national legislation. See Arbitration and Peace. **References:** H. Evans, *Sir Randal Cremer—His Life and Work* (1910); C. H. Lange, *Union Interparlementaire* (2d ed., 1911).

J. B. S.

INTERPELLATIONS IN CONTINENTAL CHAMBERS. In continental states possessing responsible parliamentary government, the ordinary tool for enforcing ministerial responsibility is the interpellation. This procedure is most fully developed in the French Chamber of Deputies. Originally an interpellation there resembled a question in the House of Commons (*see* Questions in Parliament), and in appearance it does still. But the request for information is now really made in order to bring on a debate regarding general ministerial policy or some particular ministerial act. Debate is followed by motions and a vote on which the fate of the ministry often hangs. The interpellation having been drawn up and handed to the president, the chamber fixes, if it so desires, a day for debate. Following the debate, which is general in character, motions are made to pass to the order of the day. These motions are said to be "with a motive" (*motivé*) when, as usually happens, they contain expressions of approval or disapproval of the ministry. The government ordinarily

announces what motion is acceptable to it. If this is rejected or a hostile motion adopted, in any matter of importance, the ministry resigns. The Italian practice resembles the French. In countries without responsible government interpellations, so-called, are comparatively unimportant. The defect in this method of enforcing ministerial responsibility is patent. The vote, whereon the ministry stands or falls, is not on the general record but on some particular question. Motions are framed with such cunning and nicety that a well wisher of the ministry is often induced to vote to turn it out. Publicity and responsibility are secured, but stable continuous leadership is sacrificed. **See** LEGISLATIVE SYSTEM IN EUROPE; PARTY SYSTEM IN EUROPE. **References:** A. L. Lowell, *Governments and Parties in Continental Europe* (1896), I, 117–126, 210, 258, 300, II, 89, 159, 209, n. 3; A. Esmein, *Eléments de Droit Constitutionnel Francais et Comparé* (4th ed., 1906), 858–861, 866–867.

H. A. Y.

INTERPOSITION. The Virginia Resolutions of 1798 (*see* VIRGINIA and KENTUCKY RESOLUTIONS) declare that the powers of the Federal Government result from the compact to which the states are parties, and "that, in case of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil" and for maintaining their rights. What was meant by interposition? It has sometimes been asserted that it meant nothing more nor less than nullification by a single state. Madison declared, in later years, that such was not the meaning. It is not unlikely that nothing more was intended than to secure, by coöperation among the states, a general expression of opinion. But it is possible that the framers had in mind a convention of the states to pass upon the Constitution or that they planned authoritative interpretation by amendment. **See** NULLIFICATION CONTROVERSY; STATE SOVEREIGNTY. **References:** W. MacDonald, *Select Documents* (1903), 155–157; H. von Holst, *Constitutional History* (1877–1892), I, ch. iv.

A. C. McL.

INTERPRETATION. In ascertaining the meaning of a written instrument it is necessary to take into account all its parts and ascertain the bearing of each upon the other; and this is interpretation as distinguished from construction, which relates to the ascertainment of the intent of the framers of the instrument with reference to the subject matter to which it relates. But the two terms are by general usage interchangeable. **See** CONSTRUCTION AND INTERPRETATION.

E. McC.

INTERSTATE COMMERCE AND CASES

Evolution of the Subject.—From the brief statement in the Federal Constitution that Congress shall have power "to regulate commerce with foreign nations and among the several states and with the Indian tribes" (Art. I, Sec. viii, ¶ 3) has been evolved by judicial decision in a multitude of cases the body of the present law relating to interstate commerce. The leading cases in the Supreme Court of the United States will best be understood by their statement substantially in chronological order, grouping with each, however, subsequent cases relating to the same general subject matter.

What is Commerce; Exclusive Federal Power.—The earliest and most important announcement as to the scope and effect of the constitutional provision is found in Gibbons *vs.* Ogden (1824, 9 *Wheaton* 1). Ogden, as assignee of Livingston and Fulton, asserted in the courts of New York the exclusive right to navigate with steam vessels the waters within the jurisdiction of that state under a state grant, and sought to enjoin Gibbons from using certain steam vessels in navigating said waters. Gibbons relied upon the fact that his vessels were duly licensed under an act of Congress to be employed in carrying on the coasting trade and insisted upon the unconstitutionality of the act granting exclusive privileges to Livingston and Fulton. The state courts sustained the claim of Ogden, and Gibbons appealed to the Supreme Court of the United States, relying on the commerce clause.

(a) The court held that commerce, as the term is used in the constitutional clause, is not limited to traffic involving the buying and selling or interchange of commodities, but includes also navigation, and as applied to the use of waters within the jurisdiction of any state for the purposes of interstate as well as foreign commerce confers upon Congress the power to regulate such navigation, the power conferred not being limited by state boundaries. The principle has been broadly extended to cover transportation of goods and passengers between points in different states either over internal waters (The Daniel Ball, 1870, 10 *Wallace* 557) or by common carriers engaged in land transportation (Smith *vs.* Alabama, 1888, 124 *U. S.* 465). Further extending the term "commerce" to cover commercial intercourse, it was held in Pensacola Telegraph Co. *vs.* Western Union Telegraph Co. (1877, 96 *U. S.* 1) that it includes the transmission of information by telegraph, and accordingly a state statute was held invalid which granted

an exclusive privilege to a telegraph company within specified limits, in contravention of an act of Congress which granted to telegraph companies in general privileges in relation to the public domain, the military or post roads and the navigable waters of the United States. But it has been held that the buying and selling of foreign bills of exchange (Nathan *vs.* Louisiana, 1850, 8 *Howard* 73) and the transaction by foreign corporations of the business of fire, marine, or life insurance are not interstate commerce (Paul *vs.* Virginia, 1868, 8 *Wallace* 168; Hooper *vs.* California, 1895, 155 *U. S.* 648; New York Life Ins. Co. *vs.* Cravens, 1900, 178 *U. S.* 389). However, in the Lottery Case (Champion *vs.* Ames, 1903, 188 *U. S.* 321) it was held that the carrying from one state to another by a common carrier of lottery tickets constitutes commerce which Congress has the power to regulate, and in this case the court makes the broad statement that commerce "embraces navigation, intercourse, communication, traffic, the transit of persons, and the transmission of messages by telegraph."

(b) The case of Gibbons *vs.* Ogden is also authority for the broad propositiion that the exercise by Congress of the power to regulate excludes like exercise of power on the part of the states and that when Congress has acted with reference to a particular subject matter state regulations as to the same subject matter must give way, so that in this respect there is not coördinate authority on the part of the states with Congress.

State Regulations as to Dams, Bridges, Pilots, and Quarantine.—Soon after the announcement of the decision in Gibbons *vs.* Ogden, discussed in the previous paragraph, the Supreme Court announced its conclusion that a state might authorize the obstruction of navigable waters by a dam, no affirmative legislation of Congress being found applicable to the subject matter (Willson *vs.* Black-Bird Creek Marsh Co., 1829, 2 *Peters* 245). This recognition of a concurrent state power as to commerce which might be exercised so far as not in contravention of Congressional legislation and so far as the subject matter was not one admitting only of a uniform system of regulation involving exclusive regulation by Congress was extended to state regulation of pilots, that subject having been by an act of Congress expressly relegated to state legislation (Cooley *vs.* Board of Wardens, 1851, 12 Howard 299). In Escanaba Co. *vs.* Chicago (1822, 107 *U. S.* 678) it was held that local regulations of the city of Chicago as to the opening and closing of bridges obstructing the navigation of the Chicago River were valid even as applied to vessels licensed under the laws of the United States in the coasting trade; but in Harman *vs.* Chicago (1893, 147 *U. S.* 396) an ordinance of the same city requiring the payment of a license for the privilege of navigating the Chicago River and its branches by tug boats was held to be in conflict with legislation of Congress under which licenses were granted for carrying on the coasting trade. In Morgan's Steamship Co. *vs.* Louisiana Board of Health (1886, 118 *U. S.* 455) state quarantine regulations were sustained as against the contention that they interfered with interstate commerce, it being conceded, however, that whenever Congress should undertake to provide a general system of quarantine all state laws on the subject would be abrogated, at least so far as they were in conflict with the general regulations of Congress.

State Licenses on Interstate Commerce.—A line of cases in which state legislation affecting interstate commerce has been held to be invalid although not in conflict with any specific federal legislation commences with the case of Brown *vs.* Maryland (1827, 12 *Wheaton* 419). In that case was involved the validity of a statute of Maryland imposing upon importers of certain designated commodities and other persons selling such imported commodities by wholesale, bale or package, etc., a license tax, and while the state statute was held to be invalid specifically because it imposed a burden upon importation in conformity with acts of Congress, the general tenor of the decision was that the states can not thus interfere with the general commerce which is placed within the control of Congress even though no specific action by Congress is contravened; and that a tax on the privilege of selling goods brought into a state was such interference, for the power to tax involves the power to destroy. This case affords the basis for the rule as to "original packages" (*see*). This principle was more specifically announced in Welton *vs.* Missouri (1875, 91 *U. S.* 275) in which it was held that a state can not require a license tax for sale by traveling dealers of goods which are the growth, product, or manufacture of other states or countries. Further applying this principle, it was held that a state license tax on drummers could not be enforced against those soliciting orders for goods to be shipped into the state from another state (Robbins *vs.* Shelby County Taxing Dist., 1887, 120 *U. S.* 489). But, on the other hand, it was held that a state license on commission merchants and merchandise brokers was valid as a tax on a trade, profession, or occupation, although it incidentally affected those dealing in goods brought from outside the state (Ficklen *vs.* Shelby County Taxing Dist., 1892, 145 *U. S.* 1); and that a state license tax on peddlers was valid although they might be engaged in part in selling such goods (Emert *vs.* Missouri, 1895, 156 *U. S.* 296). Reannouncing, however, the doctrine of the invalidity of state license taxes on the business of carrying on interstate commerce, it was decided that state regulations calculated to exclude foreign express companies from doing business in the state were invalid (Crutcher *vs.* Kentucky, 1891, 141 *U. S.* 47).

State Police Power; Passenger Cases; Intoxicating Liquors.—Following the principles announced in Gibbons *vs.* Ogden and Brown *vs.* Maryland, referred to in the preceding paragraphs, it was finally held—after diversities of opinion expressed in New York *vs.* Miln (1837, 11 *Peters* 102); and in The Passenger Cases (1849, 7 *Howard* 283)—that a state statute imposing a penalty on masters of vessels bringing passengers into the port of New York from any other state or any foreign country for failing to give bond to save the city harmless from all expense of support and maintenance of such persons was invalid on the ground that the whole subject matter of bringing persons into ports of the United States is one placed within the regulation of Congress (Henderson *vs.* Mayor of New York, 1875, 92 *U. S.* 259). Conceding the reservation to the states in the Federal Constitution of the general police power (*see*) covering the preservation of good order and the health and comfort of citizens, and also the protection of the public against pauperism and infectious diseases, it was held in this case that the states can not, in the exercise of this power, interfere with the general power of Congress to regulate interstate and foreign commerce.

In further application of the principles announced in Brown *vs.* Maryland, it has been held that intoxicating liquors are proper subjects of commerce (as distinguished from articles of trade which on account of their existing condition might, if admitted into the state, spread disease or be unfit for use or consumption, and which therefore might be considered as not proper subjects for traffic), the sale of which after being brought in from another state can not be prohibited or subjected to a license tax, and that a state statute forbidding common carriers from bringing such liquor into the state except on compliance with state regulations is invalid (Bowman *vs.* Chicago & Northwestern R. Co. 1888, 125 *U. S.* 465). This case practically overruled the conclusions announced in the License Cases (1847, 5 *Howard* 504) and it has been followed in cases holding that a state prohibition law is invalid as applied to intoxicating liquors brought into the state and held for sale in the original package (Leisy *vs.* Hardin, 1890, 135 *U. S.* 100) and that notwithstanding an act of Congress subjecting to state regulation the sale of intoxicating liquors within state limits, such liquors while in transit in the possession of the common carrier are still exempt from state regulation (Rhodes *vs.* Iowa, 1898, 170 *U. S.* 412). For similar reasons it has been held that oleomargarine, being a proper subject of commerce, may be sold in the original package as brought into a state from another state notwithstanding the restrictions which the state in the exercise of its police power may impose (Schollenberger *vs.* Pennsylvania, 1898, 171 *U. S.* 1).

Further as to State Police Power; Incidental Regulation of Carriers; Regulation of Rates.—Further applying the rule that even in the exercise of its police power a state can not directly interfere with interstate commerce, but still conceding the power of the state to exclude persons and property dangerous to the public peace, safety, or health, it was held in Railroad Company *vs.* Husen (1877, 95 *U. S.* 465) that a statute of Missouri prohibiting the transportation into the state during specified portions of the year of Texas, Mexican, or Indian cattle without regard to whether they were so afflicted with disease as to be likely to communicate it to other animals was an undue interference with interstate commerce; and in Minnesota *vs.* Barber (1890, 136 *U. S.* 313) and Brimmer *vs.* Rebman (1891, 138 *U. S.* 78) that statutes relating to inspection of fresh meats, so framed as practically to exclude the sale of such meats brought from another state, were likewise invalid. But in Kimmish *vs.* Ball (1889, 129 *U. S.* 217) a state statute, declaring that the owner of diseased cattle brought into the state and spreading the disease known as the Texas fever among other cattle in the state should be liable for the damage so occasioned, was held valid.

Sustaining the police power of the state in the regulation of common carriers so far as such regulation affects only incidentally the business of interstate carriage, it was held that a statute requiring railroad companies to post schedules of rates and prohibiting the exaction of higher rates than those posted, was valid (Railroad Co. *vs.* Fuller, 1873, 17 *Wallace* 560), and that state statutes prohibiting the operation of freight trains on Sunday (Hennington *vs.* Georgia, 1896, 163 *U. S.* 299) and requiring the stoppage of passenger trains at county seats so far as to give reasonable accommodation to the locality (Cleveland, C. C. & St. L. R. Co. *vs.* Illinois, 1900, 177 *U. S.* 514) were not invalid even as applied to trains employed in part in interstate commerce. State regulations calculated to secure the safety of passengers and property on railroads, although engaged in interstate commerce (Nashville, C. & St. L. R. Co. *vs.* Alabama, 1888, 128 *U. S.* 96; New York, N. H. & H. R. Co. *vs.* New York, 1897, 165 *U. S.* 628; Chicago, R. I. & P. R. Co. *vs.* Arkansas, 1911, 219 *U. S.* 453); and as to liability of carriers or telegraph companies (Western U. Tel. Co. *vs.* Commercial Milling Co., 1910, 218 *U. S.* 406) are valid.

While the general police power of the states extends to the regulation of rates of common carriers (*see* PRICES AND CHARGES), such regulations can not apply to interstate commerce (Wabash, St. L. & P. R. Co. *vs.* Illinois, 1886, 118 *U. S.* 557). In the exercise of this exclusive power of Congress to regulate rates and otherwise control the business of common carriers as far as they are engaged in interstate commerce, a commission has been

created with powers of regulation (*see* INTERSTATE COMMERCE COMMISSION).

State Taxation of Agencies and Subjects of Interstate Commerce.—The license taxes referred to in a preceding paragraph were held invalid because they amounted to burdens on interstate commerce; but taxes more general in their nature imposed by the states on the agencies and subject matter of such commerce have also been held to constitute a burden which the states could not impose. A specific tax to be estimated by weight on freight carried by any railroad into the state or out of the state was held unconstitutional (State Freight Tax, 1872, 15 *Wallace* 232), and although, in the same year, the Supreme Court sustained a state tax on gross receipts of railroad companies, including receipts from interstate commerce (State Tax on Railway Gross Receipts, 1872, 15 *Wallace* 284) ultimately it was held that while the corporate franchises, property, business, and income of such corporations might be taxed by the state, a state tax on gross receipts, as such, could not be exacted from them (Philadelphia & Southern S. S. Co. *vs.* Pennsylvania, 1887, 122 *U. S.* 326; Galveston, H. & S. A. R. Co. *vs.* Texas, 1908, 210 *U. S.* 217). And for like reason it was held that a state tax on a telegraph company carrying on in part interstate business, based on the number of messages sent, was invalid (Telegraph Co. *vs.* Texas, 1881, 105 *U. S.* 460); and further that the exaction of a license fee to be paid by a foreign telegraph company engaged in interstate commerce as a condition of its being allowed to do business in the state, such fee being proportioned to its entire capital stock, was also invalid (Western Union Tel. Co. *vs.* Kansas, 1910, 216 *U. S.* 1). But in determining the tax to be paid by a corporation doing business in the state, the entire capital, property, or income of the corporation may be taken into account as a unit, and the corporation may then be taxed on such proportion of that unit as reasonably corresponds to the proportion of the business done by it or property used by it in the state as compared with its entire business or entire property (Adams Express Co. *vs.* Ohio State Auditor, 1897, 165 *U. S.* 194, and Allen *vs.* Pullman's Palace Car Company, 1903, 191 *U. S.* 171).

Property prepared for interstate commerce remains subject to state taxation until it is put in course of transportation (Coe *vs.* Errol, 1886, 116 *U. S.* 517; Kidd *vs.* Pearson, 1888, 128 *U. S.* 1), and property which has been transported into a state from another state for sale becomes subject to taxation as other property even though it is held in bulk for subsequent disposal abroad (Brown *vs.* Houston, 1885, 114 *U. S.* 622). From the last case it would seem that, though property brought into the state while it remains in the original package is exempt from state regulation, it is not relieved from general taxation.

Exercise of Federal Power over Interstate Commerce.—Until within a comparatively recent time the questions arising under the commerce clause have related to its effect as a limitation upon state power. But under the authority of that clause Congress is now enacting many statutes, some of which have been passed upon as to their validity by the Supreme Court of the United States. It is not practicable to do more than catalogue these cases: that Congress may under the commerce clause regulate the use of navigable waters (*see* NAVIGATION, REGULATION OF); that it may charter corporations to carry on foreign and interstate commerce (*see* COMMERCE, GOVERNMENTAL CONTROL OF); that it may establish a commission to regulate rates and prohibit discrimination in interstate commerce (*see* INTERSTATE COMMERCE LEGISLATION); that it may prohibit combinations and trusts so far as they relate to interstate commerce (*see* SHERMAN ANTI-TRUST ACT). The first statute enacted by Congress to regulate the liability of common carriers engaged in commerce between the states and foreign nations to their employees was held to be in excess of the power conferred by the commerce clause, because not confined solely to regulating interstate commerce but was applicable also to the liability of such a carrier to any employee whether engaged in the business of carrying on interstate commerce or not (Howard *vs.* Illinois Central R. Co., 1908, 207 *U. S.* 463); but a subsequent act has been passed to meet this objection. A statute limiting the hours of continuous employment of railroad employees engaged in interstate commerce has been sustained (Baltimore & O. R. Co. *vs.* Interstate Commerce Commission, 1911, 221 *U. S.* 612). Statutes requiring safety appliances on railroad trains employed in interstate commerce have been held valid (St. Louis, I. M. & S. R. Co. *vs.* Taylor, 1908, 210 *U. S.* 281; Chicago, B. & Q. R. Co. *vs.* United States, 1911, 220 *U. S.* 559). The commodities clause statute (known as the Hepburn Act), prohibiting railroad companies from transporting in interstate or foreign commerce any article or commodity (with certain exceptions) manufactured, mined, or produced by or under its authority, or which it may own in whole or in part or in which it may have any interest direct or indirect, has been sustained (United States *vs.* Delaware and Hudson Co., 1909, 213 *U. S.* 366). A statute excluding from interstate commerce adulterated articles (the Pure Food Act, *see*) has been enforced (Hipolite Egg Co. *vs.* United States, 1911, 220 *U. S.* 45). And statutory regulations as to the length of time animals in course of transportation may be confined without rest, water, and feeding have been applied (Baltimore & O. R. R. Co. *vs.* United States, 1911, 220 *U. S.* 94).

See COMMERCE, GOVERNMENTAL CONTROL OF; COURT, COMMERCE; FERRIES; FREIGHT TRANS-

PORTATION, CLASSIFICATION OF; INTERSTATE COMMERCE COMMISSION; INTERSTATE COMMERCE LEGISLATION; RAILROAD COMMISSIONS, STATE; TELEGRAPH REGULATION; TRAFFIC AGREEMENTS; TRANSPORTATION, ECONOMIC PRINCIPLES OF.

References: E. P. Prentice and J. G. Egan, *The Commerce Clause of the Federal Constitution* (1898); F. N. Judson, *Law of Interstate Commerce and Its Federal Regulation* (1905); F. H. Cook, *Commerce Clause of the Federal Constitution* (1908); W. W. Willoughby, *Constitutional Law of the U. S.* (1910), chs. lxii, lxiii; C. A. Beard, *Readings in Am. Government and Politics* (1911), ch. xix.

EMLIN MCCLAIN.

INTERSTATE COMMERCE COMMISSION

Creation.—After some fifteen years of intermittent agitation for federal control of railways, the Interstate Commerce Commission was established by act of Congress approved February 4, 1887. The Commission is an administrative board, with quasi-judicial powers. At first connected with the Department of the Interior, it has been, since 1889, an independent board, reporting directly to Congress. Its composition and function as prescribed by the statute of 1887 have been much modified by subsequent enactments, especially those of March 2, 1889, February 11, 1893; the Hepburn Act of June 29, 1906, the act of June 18, 1910; and numerous other acts of lesser importance.

Jurisdiction.—With respect to subject matter the jurisdiction of the Commission, as originally defined, covered transportation wholly or partly within the United States, except such as was purely intra-state or intra-territorial; while so far as persons were concerned, it embraced all common carriers engaged in such transportation by rail, or partly by rail and partly by water when both routes were used under a common control or arrangement. In 1906 this sphere of authority was enlarged to include intra-territorial traffic, and also express and sleeping car companies, as well as owners of pipe lines, except those transporting water and gas. In 1910 it was further extended to embrace corporations operating cables, telephones and telegraphs, both wire and wireless.

Powers and Duties.—The general function of executing and enforcing the provisions of the Interstate Commerce Act was not in terms conferred upon the Commission until 1889, but at the outset certain special powers were granted and duties imposed. One class of these pertained to investigations. The Commission was authorized to inquire into the management of the business of common carriers, and to investigate, on complaint or on its own motion, alleged violations of the act, in such a manner as would "best conduce to the proper dispatch of business and to the ends of justice" and was empowered to require the attendance and testimony of witnesses and the production of books and papers.

Upon concluding an investigation it was to render a written report, and if any violation of the act has been discovered, it was obliged to serve notice upon the offending carrier to desist, or to make reparation for injury done, or both. In case of a carrier's refusal to comply with such a requirement, the Commission was directed to apply to a federal circuit court for proper process to enforce the order, which the court was authorized (though not required) to issue.

The Commission was also empowered, in its discretion, to relieve carriers from the operation of the Long and Short Haul Clause (*see* Interstate Commerce Legislation), and by the amendment of 1889, to prescribe the forms of all schedules and the measure of publicity to be given to joint tariffs. It was further given the right to demand from carriers annual reports, to determine the form of such reports, and to require a uniform system of accounts, prescribing the manner in which such accounts should be kept.

Rate Making.—Such were the original powers and duties of the Commission, but the field of its activities, especially as to rates, has since been considerably enlarged. Nowhere in the act of 1887 was there a definite grant of the rate-making function; nevertheless the Commission interpreted the act to justify that power. Inasmuch as the act required carriers to charge reasonable and not unjustly discriminatory rates, and as the Commission possessed authority to investigate complaints and order violations of the act to cease, the board assumed that it could require carriers to desist from charging unjust or unreasonable rates—a requirement, however, which necessitated a statement by the commission as to what would be just and reasonable rates. These proceedings were arrested by a decision of the Supreme Court, rendered in 1897 (167 *U. S.* 479) which denied that Congress had intended the construction given to the act by the Commission.

Thus shorn of its rate-making authority, the Commission appealed to Congress for a definite grant of power, in 1906. It was authorized to prescribe, after full hearing on complaint, just and reasonable maximum rates, and to determine reasonable regulations and practices affecting the charging of rates. Its orders were to be effective for two years or

less, as determined by itself, unless suspended or set aside by a court, through the grounds upon which a court might interfere were not specified. It was also privileged to establish through routes and maximum joint rates, upon the neglect of carriers to do so. A penalty of $5,000 a day was established for the violation of any order of the Commission affecting rates. The Commission's power over rates, as thus defined by the Hepburn Act, was enlarged by the law of June 18, 1910, which authorized it to fix rates after hearings held without previous complaint, on its own motion; also, pending an examination of new rates and classifications filed by carriers, to suspend them for 120 days and, if necessary to complete the investigation, for a further period not exceeding six months.

Accounts.—More ample authority, with respect to accounts, was also conferred in 1906. The original act, indeed, permitted the Commission to require uniformity of accounting, but failed to grant it executing powers. This defect was corrected by the Hepburn Act, of 1906 which authorized the Commission to prescribe the forms of any or all accounts, records and memoranda kept by carriers, covering traffic operations as well as money transactions, and to employ agents to inspect accounts and records. The act forbade carriers to alter, mutilate or destroy their accounts or records, to make false entries or to fail to make full and correct entries in them, or to keep any others than those prescribed. To enforce all these provisions, writs of mandamus were authorized.

Other Functions.—Among other powers and duties conferred on the Commission may be mentioned: authority to require monthly reports of earnings and expenses (1906); to require further periodical or special reports (1910); to request the Attorney General to apply to the federal courts for writs of mandamus commanding carriers to comply with the Interstate Commerce Act and all supplementary legislation (1906); and to issue orders after investigations made on its own motion (1910) which power had not previously been clearly stated. In addition, the Chairman or some other commissioner is charged, by the act of June 1, 1898, as amended March 4, 1911, with the duty of intervening in railway strikes; and the Commission has been given numerous responsibilities in connection with the technical features of railway operation. These have been imposed by various statutes (*see* ACCIDENTS). In the discharge of these last named duties the Commission, constituted, as auxiliary to itself, a Block Signal and Train Control Board, which is still (1913) in existence.

Difficulties.—In attempting to discharge its functions, the Commission has been hindered by numerous obstacles, some of a very serious nature. Mention has already been made of a few of these obstacles, especially the Commission's lack of authority over rates, from 1897 to 1906. (1) Among other hindrances to its success, of primary consequence, is the inherent difficulty of the problem with which the Commission has had to deal. The problem of rates, far from being easy of solution, is on the contrary vast, complicated and perplexing. Under the most favorable circumstances it would be hard to handle, but its solution has been rendered extraordinarily difficult by differences of opinion, even of expert opinion, with reference to the fundamental principles involved. For these reasons this problem has not yet been mastered.

(2) Of less importance is the limitation of the Commission's jurisdiction to a portion of the traffic of the country, in other words, the exclusion from its oversight of purely intrastate transportation, a restriction which causes some embarrassment in the work of railway control.

(3) So of the relations between the federal and the state systems of regulation; while in large measure amicable and harmonious they have not always fitted together. Neither has there been that organized coöperation between the state and national commissions, which is essential to the success of both.

(4) Another obstacle has been the tardiness of Congress in enacting adequate provisions of law, the necessity for which had been demonstrated by experience. The difficulty encountered by the Commission in securing the aid of an intelligent and discriminating public sentiment, is also worthy of mention.

(5) Further, it is probable that the Commission has suffered to some extent from dissipation of effort due to the possession of too great a variety of functions—particularly those concerned with labor difficulties and technical operation, which subjects are so far removed from the question of rates and require such specialized training for their proper treatment as to make it possible to assign them to distinct governmental authorities.

Moreover, until 1906 an order of the Commission was without effect until, on application from that board or some interested party, a federal court in its discretion directed obedience to the order. Since 1910, orders become obligatory at once and must be obeyed until set aside or suspended by the courts.

(6) In its efforts to secure information the Commission has encountered serious obstacles. The Supreme Court in the Harriman Decision of 1908 (211 *U. S.* 407) narrowed the field within which the Commission may conduct inquiries; but of even greater importance have been the court's rulings with reference to compulsion of testimony. The provision of the original act empowering the Commission to require the presence and testimony of witnesses was, in 1892, (142 *U. S.* 547) declared void because repugnant to the Fifth Amendment—"no person shall be compelled in any criminal

proceeding to be a witness against himself." True, Congress had provided that testimony given under compulsion should not be used against the witness in the trial of any criminal proceeding, but the Court held that this was not sufficient protection to satisfy the constitution, because the witness by confessing his guilt might open the way to prosecution and conviction on the basis of testimony secured elsewhere. Accordingly, in 1893, Congress enacted that although no one should be excused from testifying on the ground that his testimony would tend to criminate him, yet no person so testifying should ever be prosecuted on account of any act concerning which he might give evidence. Under this amendment, which was finally upheld as constitutional (161 *U. S.* 591), the Commission may compel evidence, but only at the expense of giving to guilty persons such "immunity baths" as will fully exempt them from prosecution.

(7) Another hindrance to the Commissioner's progress has been the persistent and vigorous resistance of railway financiers and managers, who have maintained an almost uncompromising attitude of opposition to regulation, shown by their efforts, often successful, to prevent the enactment of legislation recommended by the Commission, or at least to weaken bills before passage, their skill in evading laws and orders and in devising secret methods of violating them, their disposition to seize on legal technicalities and to fight almost every feature of regulation in the courts. The Commission has also felt hindered by absence of power in certain important particulars, notably lack of authority to regulate railway capitalization and to proceed with an official valuation of railway properties.

Relation of the Courts.—Perhaps the most serious difficulties encountered by the Commission have been incidental to the vast volume of litigation in which it has been involved; in part these are due to the large expenditure, not alone of money, but of thought and effort, and to the delays of litigation, which often rob the activities of a railway commission of much of their usefulness. In respect to delays, the situation has been somewhat improved by the act of February 11, 1903, as amended—a law designed to expedite the trial of interstate commerce cases—and by the establishment of the Commerce Court, in 1911.

Although the original act declared that the Commission's findings of fact should, in all judicial proceedings, be deemed *prima facie* true, the courts have not accorded such weight to them, but have taken evidence anew, thus permitting railways to make cases in the courts on the basis of evidence withheld from the Commission.

Check on the Commission.—The most serious check on the Commission has been the unfavorable attitude of the courts—their apparent unwillingness to interpret and apply national legislation in such a way as to permit vigorous and effective regulation of railways. This attitude may be seen in a large number of decisions: permitting the Commission to compel testimony only at the expense of granting immunity baths (142 *U. S.* 457); depriving the Commission of its rate-making power (167 *U. S.* 479); weakening the long and short haul clause (168 U. S. 144), the commodities clause (213 *U. S.* 366) and the Elkins law (164 *Fed. Rep.* 376); and in many others. The characteristic conservatism of the courts and their no less characteristic devotion to property rights and vested interests have resulted in conflicts of opinion with the Commission and in a rather narrow circumscribing of its activities, as well as in mitigation of the force of regulative statutes.

Results.—In spite of all these and other obstacles, the Commission has achieved valuable results. Many controversies between carriers and shippers have been adjusted by formal or informal proceedings, and numerous changes in rates and classifications have been effected through the interposition of the Commission. The power of suspending rate advances, conferred in 1910, was at once used with marked success. A uniform system of accounting has been established for railways and other carriers, and full and reliable railway statistics have been compiled and published. Much has also been accomplished by the Commission with regard to safety appliances and related matters.

In a more general way, the Commission has been of distinct educational value, in disseminating knowledge and provoking thought and discussion as to railway affairs. It has furthermore served as a stimulus to railway managements, and at the same time a restraint upon them, has aided in raising the morals of the railway service, and above all has kept awake in the minds of railway men a sense of their obligations to the public.

If the concrete results seem small in comparison with the needs of the situation, it must be remembered that until 1906 the powers of the Commission were too restricted for very effective work; and that since the passage of the acts of 1906 and 1910 sufficient time has not elapsed to demonstrate their value. When they have been interpreted by the courts and when the necessary period of experimentation is past, it may become evident that the Commission has entered upon an era of very greatly increased usefulness.

Personnel.—At the outset the Commission consisted of five members (not more than three commissioners from any one political party), appointed by the President for a term of six years at an annual salary of $7,500 each. By the Hepburn Act of 1906 the board was enlarged to seven members, not more than four from one party, with terms of seven years, one

commissioner's term expiring each year, the salary to be $10,000.

The personnel of the Commission from the beginning has been as follows: Thomas M. Cooley, 1887–1891; William R. Morrison, 1887–1897; Augustus Schoonmaker, 1887–1890; Aldace F. Walker, 1887–1889; Walter L. Bragg, 1887–1891; Wheelock G. Veazy, 1889–1896; Martin A. Knapp, 1891–1910; James M. McDill, 1892–1894; Judson C. Clements, 1892; James D. Yeomans, 1894–1905; Charles A. Prouty, 1896–1914; Wm. J. Calhoun, 1898–1899; Joseph W. Fifer, 1899–1905; Francis M. Cockrell, 1905–1910; Franklin K. Lane, 1906–1913; Edgar E. Clark, 1906–; James S. Harlan, 1906–; Charles C. McChord, 1911–; Balthasar H. Meyer, 1911–; and John H. Marble, 1913; Winthrop M. Daniels, 1914–; Henry C. Hall, 1914–. The following have served as chairmen: Cooley, 1887–1891; Morrison, 1891–1897; Knapp, 1898–1910; Clements, 1911–1912; Lane, Jan., 1912–March, 1912; Prouty, 1912–1913; Clark, 1913–1914; Harlan, 1914–.

Publications.—The publications of the Commission include the *Annual Reports* to Congress (since 1887), its decisions, published in volumes entitled *Interstate Commerce Commission Reports* (since 1887), its annual volumes on *Statistics of Railways* (since 1888), *Quarterly Accident Bulletin* (since 1901), *Monthly Bulletins* of railway revenues and expenses (since 1909), *Annual Reports on Statistics of Express Companies* (since 1909) and various other regular and special reports.

See COMMERCE, GOVERNMENTAL CONTROL OF; COMMISSIONS IN AMERICAN GOVERNMENT; CONCURRENT POWERS; COURT, COMMERCE; COURTS AND UNCONSTITUTIONAL LEGISLATION; EXECUTIVE AND EXECUTIVE REFORM IN THE AMERICAN SYSTEM; INTERSTATE COMMERCE DECISIONS; INTERSTATE COMMERCE LEGISLATION; PUBLIC SERVICE COMMISSIONS; PUBLIC SERVICE CORPORATIONS; RAILROAD COMMISSIONS, STATE; SEPARATION OF POWERS.

References: E. R. Johnson, *Am. Railway Transportation* (2d ed., 1908), 367–385; B. H. Meyer, *Railway Legislation in the U. S.* (1903), 189–261; H. C. Barnes, *Interstate Transportation* (1910); F. A. Cleveland and F. W. Powell, *Railroad Promotion and Capitalization in the U. S.* (1910); H. S. Haines, *Problems in Railway Regulation* (1911); *Am. Year Book, 1910*, 535, 550, *ibid, 1911*, 556, *ibid, 1912*, 155.

HARRISON S. SMALLEY.

INTERSTATE COMMERCE DECISIONS

General Principles.—In its first annual report the Interstate Commerce Commission approved the doctrine that railway rates should be chiefly determined according to the value of the service rendered. In dealing with actual cases, however, it speedily found "value of service" too vague an idea for practical purposes, and accordingly in its decisions it developed a number of more definite principles or tests according to which it has endeavored to regulate rates. Its theory is that the circumstances of each case must determine which principle or principles shall be applied. In numerous cases it accepts some one principle as "controlling;" but in many others it takes into account two or more principles and gives to each the weight which in its judgment seems right.

It has not always been entirely consistent in its decisions, partly because of changes in its personnel, partly because of modifications of its views due to experience and reflection, and partly because of the influence of judicial decisions. Yet it must be said that the number of its inconsistencies has been surprisingly small, and that they have appeared not so often in the statement as in the application of principles. It is possible, therefore, to find certain standards of rate making recognized and approved by the Commission in its settlement of cases.

Absolute Rates.—Most of the decisions of the Commission have been concerned with the proper relations between different rates, rather than with the absolute level at which changes should be placed. This is in accord with the expressed conviction of the Commission that "a rate can seldom be considered in and of itself. It must be taken almost invariably in relation to and in connection with other rates." Nevertheless a few principles or tests have been established for absolute rates. The Commission concurs with the courts in the doctrine that the general level of a railway's rates should be such as to yield a "reasonable return" on the "fair value of the property," though it has not gone far in giving definiteness to either of these terms. Indeed, it has seldom made use of this principle, because almost all of the cases before it have involved, not general schedules, but specific rates, in relation to which the application of the principle is difficult if not impossible. While recognizing that competition may reduce rates unduly, the Commission nevertheless believes that the charges established by long continued competition sometimes constitute an important consideration in determining absolute reasonableness. So also "a long-existing rate" is frequently presumed to be correct. Other rates charged by railways furnish a further test of the fairness of a given rate, especially "rates on the same or adjacent lines in the immediate territory where the same conditions exist."

Relative Rates.—Although, in its first report, the Commission rejected the cost principle as

a means of fixing the absolute charge for each service, it recognized that cost should be considered in rate making; and in many cases it has employed comparisons of ascertainable expenses as tests of the proper relations between rates. On this basis it approves the disparity between rates for car load lots and less than car load lots, and frequently indorses relatively high charges on the ground that the transportation affected involves exceptional risk, as in the case of perishable goods; or imposes special expense on the railway, as when dressing of lumber in transit is allowed; or requires the provision of special services or facilities, such as specialized cars, icing, and exceptional speed. A comparison of costs is also used in adjusting rates between commodities somewhat similar in character, such as oranges and strawberries; between raw materials and the finished products, as in the case of live stock and meat products; between two articles, on one of which the rate is acnowledged to be reasonable; and between places, as well. Indeed the cost theory is the chief basis of the "distance principle" that rates should vary directly but not proportionally with distance. The Commission applies this principle with but few exceptions or modifications, not only because of the "long and short haul clause" of the Interstate Commerce Act, but because it believes in it. The distance principle, however, does not depend entirely on the idea of cost. "Value of the service" is suggested by the Commission as a further argument for it, as is also the desirability of preserving the advantages of geographical location.

Preservation of Natural Advantages.—This suggests another test. The Commission has strongly insisted that, although monopolies shall not be encouraged, relative rates shall generally be so adjusted as to preserve to each community the natural advantages of its location, whether such advantages result from proximity to markets, the possession of a cheaper route to markets, nearness to a base of raw materials or any other conditions making for a lower cost of production. This principle is supported on various grounds—one of them the cost theory; a second, the idea that its geographical advantages justly belong to a district; another, the belief that consumers should be served as cheaply as possible; and still another, the feeling that investments of capital early attracted by natural advantages should be protected. Regard for vested interests is, indeed, a consideration not infrequently kept in mind by the Commission in adjusting rates, as is also the undesirability of disturbing extensively the rate situation.

Value of Commodities.—According to the expressed opinions of the Commission, the comparative values of commodities constitute the most important factor in determining the proper relations among rates. Several reasons are given for this—the advisability of encouraging the transportation of many articles which, though cheap in proportion to weight and bulk, are nevertheless of great social importance; the fact that high value of commodity may mean high value of service; the fact that consumers can often afford to pay more for the carriage of more expensive articles; the consideration that higher value means greater risk and hence greater cost of transportation; and the desirability of preserving competition between carriers or between producers.

Thus relative values are considered in adjusting rates between competitive articles, between commodities of similar character, between raw materials and the finished product, and between articles of different degrees of economic and social importance. Rates are made to vary directly, though of course not proportionally, with value of commodity.

Competition.—Competition is also a factor in the determination of relative rates, though the Commission seems often to recognize it more because of practical exigencies than because it is intrinsically right. Thus the competition of a carrier not subject to the interstate commerce act is considered in fixing a railway's rates chiefly, if not wholly, because the carrier happens to be outside the scope of the act. And the Commission's abandonment of its early view that competition between carriers subject to the act could not, except in rare and peculiar cases, justify a higher rate for a shorter than a longer haul, was due to judicial compulsion rather than to a conviction of its incorrectness. On the other hand, competition between producers, and between places, for example, between distributing centers, is frequently recognized in rate making. Competition between sea ports, and between the roads leading to them, for export traffic has been held to justify differential rates. Moreover, the Commission has sometimes approved lower rates on goods intended for export than on goods designed for domestic consumption, partly because of competition of carriers, and partly under the influence of court decisions.

Other factors that enter into the Commission's regulation of relative rates are the different uses to which an article may be put; the desirability of preventing monopoly by promoting competition between producers and dealers as well as carriers; and the expediency of preventing undue centralization of business. Furthermore the Commission sometimes appeals not merely to definite standards, but to general considerations of economic and social welfare as elements which should be taken into account.

See ADVISORY OPINIONS; COMMERCE AND LABOR, DEPARTMENT OF; COMMERCE, GOVERNMENTAL CONTROL OF; CONCURRENT JURISDICTION; CONSTRUCTION AND INTERPRETATION; COURTS, FEDERAL, JURISDICTION OF; COURTS AND UNCONSTITUTIONAL LEGISLATION; EXECUTIVE AND JUDICIARY; FRANCHISES, CORPORATION,

Legal Aspects of; Labor, Department of; Law, Administration of by Courts; Law, Administrative; Ordinances, Executive.

References: The decisions of the Commission are published in volumes entitled, *Interstate Commerce Commission Reports;* M. B. Hammond, *Railway Rate Theories of the Interstate Commerce Commission* (1911); E. B. Peirce, *Digest of Decisions of the Courts and the Interstate Commerce Commission* (1908); *Am. Year Book, 1910,* 58, and year by year.

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INTERSTATE COMMERCE LEGISLATION

National legislation affecting interstate commerce has been somewhat fragmentary and miscellaneous. Whenever particular evils have gained considerable prominence, Congress has generally passed laws, more or less incomplete, to meet them; but it has made no attempt to cover the subject of national commerce in a comprehensive and systematic fashion. This makes difficult a satisfactory classification of statutory provisions relating to that subject. Nevertheless, such provisions as are not elsewhere treated in detail may conveniently be grouped under the five main heads below.

Rates and Traffic.—Perhaps the most imporant provisions of our interstate commerce laws are those which pertain to the rates charged by common carriers. Agitation for federal control of such rates began in the early seventies, and continued intermittently for some fifteen years, without result. In 1886, however, the Supreme Court decided (118 *U. S.* 557), contrary to a ruling announced ten years before (94 *U. S.* 113), that even in the absence of Congressional action the states have no power to regulate their respective shares of the rates fixed for interstate transportation. It then became evident that if such charges were to be regulated at all, national action was needed, and on March 4, 1887, the Interstate Commerce Act was passed. This statute has been supplemented and amended by the acts of *March 2, 1889, February 10, 1891, *February 11, 1893, February 8, 1895, February 11, 1903 (the Expediting Act), *February 19, 1903 (the Elkins Act), *June 29, 1906 (the Hepburn Act), June 30, 1906, April 13, 1908, February 25, 1909, *June 18, 1910, and June 25, 1910. The statutes marked by asterisks are of special importance. With respect to rates, the original act announced two general principles: that all charges for all services rendered by common carriers shall be reasonable and just; and that no undue or unreasonable preference or advantage shall be given to any person, concern, locality, or kind of traffic. The act of 1910 adds the further requirement that carriers shall establish and observe just and reasonable classifications and just and reasonable regulations and practices affecting rates, tariffs, and the issuance, form, and substance of tickets, receipts and bills of lading.

In addition to these general provisions, many specific rules have been enacted. With regard to publicity of rates, each carrier is required to print in the manner prescribed by the Commission, its classifications and schedules of local and joint rates, together with all regulations affecting its charges; also to file copies with the Commission, and post copies in two conspicuous places in each station. Changes in rates can be made only on thirty days notice to the public and to the Commission, which, however, is authorized to modify any of these requirements in special cases. Carriers must file with the Commission copies of all contracts and arrangements with other carriers, relating to traffic; and, when application is made to any station agent, must correctly state in writing the rate for any described shipment.

Discriminations.—Another group of rules relate to discriminations. The act of 1887, besides its general prohibition of unjust discrimination, contains four specific provisions: (1) Different persons must be charged the same rates for services "like and contemporaneous" and performed "under substantially similar circumstances and conditions." (2) No variations are allowed from the rates appearing in the published schedules. (3) Conditions are specified (since modified in certain details) under which transportation may be offered free or at reduced rates. (4) The "long and short haul clause," forbade a greater charge for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a larger distance over the same line, in the same direction, the shorter being included within the longer distance—with the proviso that the Commission might allow exceptions to the rule. As this clause was subsequently weakened by judicial interpretation of the words "under substantially similar circumstances and conditions" (168 *U. S.* 144), that phrase was expunged by Congress in 1910.

To enforce these provisions, the act, as amended in 1889, fixed as a penalty for their violation by any officer or employe of a carrier, a fine not exceeding $5,000, or imprisonment not exceeding two years, or both. In 1889 the federal courts were also empowered to mandamus carriers to move traffic for any shipper on terms as favorable as those given to any other shipper for like traffic under similar conditions. The Elkins act of 1906 fixed a penalty of from $1,000 to $20,000 for depart-

ing or offering to depart from published rates; also for offering, giving, soliciting or receiving any discrimination. This act made a distinct advance by subjecting shippers accepting discriminations to the same punishment as carriers granting them; but it was defective in so far as it abolished imprisonment as a penalty. This weakness was remedied, however, by the Hepburn Act of 1906, which reëstablished imprisonment for a term not exceeding two years, as part punishment.

Indirect Discriminations.—Following the enactment by the states and the nation of general prohibitions against discrimination, the open forms of that evil tended to disappear, but secret and subtle expedients took their place. As these began presently to come to light, Congress enacted provisions directly aimed at some of them. Thus the "Commodities Clause" of the Hepburn Act makes it unlawful for a railway company to transport any commodity except timber and the products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest direct or indirect, except articles intended for its use as a common carrier. This was intended to prevent discriminations against independent coal companies by railways controlling coal properties. The Hepburn Act also forbids carriers to refund "by any device" any portion of the rates charged, or to extend to any shipper any privileges or facilities not specified in the published tariffs. Furthermore, to prevent rebates under the guise of payments to shippers of compensation for services rendered by them, the Commission is authorized to fix the remuneration for all such services. The act of 1910 prohibits the obtaining of rebates through the presentation of false claims of damages; forbids carriers and shippers to cause transportation, at less than published rates, by means of false billing, false weighing and similar practices; prohibits officers and employees of carriers from disclosing any facts, respecting shipments, which might be used to the shipper's detriment, or might improperly reveal his business transactions to a competitor; and also makes it equally unlawful to solicit or receive such information.

Certain miscellaneous provisions respecting rates also deserve mention. The Hepburn Act makes it the duty of carriers to establish through routes and reasonable rates applicable thereto. The Act of 1910 throws upon the carriers the burden of proving the reasonableness of increases in rates; and, also specifies that whenever a railway, in competition with a water rate, shall reduce competitive rates, it shall not raise them again unless the Commission finds that the proposed increase is not due to the elimination of water competition.

Relations between Railways.—Intimately connected with the matter of rates is the subject of inter-railway relations. These have been affected by but one section of the Interstate Commerce Act, which declares it to be unlawful for carriers to enter into contracts or combinations for the pooling of freight or of all or any portion of the receipts.

The Act of 1887 contains two provisions respecting traffic. One requires carriers to interchange traffic with competing lines without discriminating in rates between them. The other specifies that the carriage of freight from the point of shipment to destination shall be regarded as one haul, unless a stoppage is made in good faith for some necessary purpose. The Hepburn Act makes it the duty of carriers to provide upon reasonable request not merely cars and other means for the carriage of freight, but also facilities for its receipt, delivery, elevation, transfer in transit, ventilation, refrigerating, icing, handling and storage. The act also requires carriers to connect their tracks on request with lateral, branch lines of road, and with private side tracks, where such connections are safe and reasonably practicable, and will furnish sufficient business—which points are to be determined by the Commission. A further provision obliges an initial carrier to issue a bill of lading and thereafter to be liable to the lawful holder, contracts or regulations to the contrary notwithstanding, for loss or damage caused by any carrier—reserving the right to recover in turn from the carrier actually responsible. The act of 1910 compels carriers to establish and enforce reasonable rules and practices respecting all matters connected with the receiving, handling, transporting, storing and delivering of freight. It further grants to the shipper the right to determine by which of two or more possible routes his freight shall be carried.

Additional Protection.—Certain provisions for the enforcement of the Interstate Commerce Act and supplementary legislation have already been incidentally mentioned, but a few others should receive notice. In addition to special penalties for particular offenses, the act of 1887 imposes, on guilty directors, officers, receivers, agents and employees, a general liability to a fine of $5,000 or less for violations of the act; while the Hepburn Act provides for writs of mandamus to compel compliance with the provisions of the Interstate Commerce Act and statutes supplementary thereto. In connection with the enforcement of these laws the act of February 11, 1903, as modified by the Elkins and Hepburn acts, has been of importance, inasmuch as it provides for the expediting of suits arising under the Interstate Commerce and Anti-Trust acts, and other laws "having a like purpose."

Labor.—The "Employer's Liability Act" of June 11, 1906, declared unconstitutional January 6, 1908, because it affected intra-state commerce, was replaced by the stronger act of April 22, 1908, which makes every common carrier liable to its employees, or, in case of death,

to their next of kin dependent on them, for damages for injury or death, while engaged in interstate commerce, resulting in whole or in part from negligence of officers and employees or from defects due to its negligence as to its physical property—any contract to the contrary notwithstanding. It also abolishes the contributory negligence rule, though it provides that damages shall be diminished by the jury according to the amount of negligence attributable to the employee. It further relieves employees of the charge of contributory negligence and strengthens the original Safety Appliance Act in releasing them from their "assumption of risk," when the violation of any law for the safety of employees has contributed to their injury or death. (For the "Hours of Service" law *see* ACCIDENTS.) A law of June 28, 1886, provides for the incorporation of trade unions. The act of October 1, 1888, respecting railway strikes, was replaced, June 1, 1898, by another, which provides that in controversies between carriers and employees engaged in railroad train service, conciliation shall be attempted by the Commission of Labor and the Chairman of the Interstate Commerce Commission, or, under the amendment of March 4, 1911, some other member of the Commission or some judge of the Commerce Court, designated by the President. If they fail, arbitration may be resorted to, according to a plan prescribed by the act. This law also prohibits certain discriminations against members of labor unions, certain attempts of employers to escape liability for injuries to employees, and certain forms of blacklisting.

Prevention of Deception; Prohibition of Transportation of Certain Goods.—Many laws have been enacted to prevent deception and to secure high quality in goods. Such is the act of June 13, 1906, passed to prevent interstate or foreign commerce in, or transmission by mail of articles made of gold or silver so branded or labeled as to indicate that the precious metal is of a greater degree of fineness than it actually is, according to standards specified in the act, which further subjects such goods, when transported into a state, to the operation of the laws of that state, even if retained in the original package. Prior to the Pure Food Act, statutes had been enacted to subject oleomargarine imported into a state to the laws of that state, even while in the original package (May 9, 1902); and also to forbid interstate transportation of dairy products falsely labeled as to the state in which produced (July 1, 1902). The Pure Food Act itself (June 30, 1906) defines "adulteration" and "misbranding" and forbids interstate or foreign commerce in adulterated or misbranded drugs or articles of food. It provides for criminal suits against violators of the act, and proceedings for the confiscation of denounced articles.

Legislation to regulate the transportation of live stock, and to provide for the inspection of the same, was enacted May 29, 1884, and August 30, 1890, as was also an act relating to the transportation of condemned carcasses of animals, May 2, 1895, but the first comprehensive law of this kind was a statute of June 30, 1906, called the Meat Inspection Act. This law contains elaborate provisions for the inspection of live stock, meat and meat products, under the supervision of the Secretary of Agriculture. It prohibits interstate and foreign commerce in meats and products not inspected and "passed" as sound and wholesome; requires condemned articles to be destroyed for food purposes; and forbids owners of meat concerns not complying with all the terms of the act to transport in interstate commerce any meat or meat products. The Wilson Act of August 8, 1890, subjects liquor transported into a state to the police regulations of the state, without exemption on the ground of introduction in original packages, and the same rule is established in favor of state game laws by the act of May 25, 1900. Under these and similar laws already mentioned, interstate commerce in liquor and other articles is to a slight extent regulated by state enactments.

Minor and Indirect Violations.—Incidentally it may be noted that interstate commerce is further affected by certain other state laws, such as acts fixing rates on interstate traffic, prescribing demurrage charges, and regulating the speed of trains. Many federal statutes not yet mentioned also have a bearing direct or indirect, upon interstate commerce. Such are the acts, too numerous and complex for detailed treatment here, relating to navigation, bridges over navigable waters, etc.; the patent, trade mark and copyright laws; the acts creating the Bureau of Standards and relating to weights and measures; the internal revenue laws; and the postal laws, especially the provisions forbidding the sending of fraudulent matter through the mails. Such also is the act of February 2, 1897, forbidding the interstate carriage of obscene matter, and that of March 2, 1895, prohibiting similar carriage of lottery tickets. Mention should also be made of the early act of June 15, 1866, authorizing railways to engage in interstate commerce and to unite their tracks with those in other states, so as to form continuous lines; of the act of July 24, 1866, authorizing telegraph companies to build upon the public domain, along military and post-roads, and over navigable waters; and of the act of August 7, 1888, granting to the Interstate Commerce Commission certain authority over government-aided telegraph lines.

See ACCIDENTS, RAILROAD AND STEAMSHIP; COMMERCE, GOVERNMENTAL CONTROL OF; COMMISSIONS IN AMERICAN GOVERNMENT; COURT, COMMERCE; DAY IN COURT; DIFFERENTIALS IN RAILROAD TRAFFIC; EXPRESS SERVICE, REGULATION OF; FRANCHISES, CORPORATION; FOURTEENTH AMENDMENT; LONG AND SHORT HAUL;

Railroad Traffic; Discrimination in Railroad Rates; Differentials in Railroad Traffic; Express Service, Regulation of; Franchises, Corporation; Fourteenth Amendment; Long and Short Haul; Railroad Capitalization; Railroad Establishment and Management; Railroads, Physical Valuation of; Reasonableness in Restraint of Trade; Rebates in Transportation; Separation of Powers; Sherman Anti-Trust Act; Traffic Agreements; Transportation, Economic Principles of; Transportation, Regulation of; Trusts; Uniformity of Railroad Accounts.

References: In addition to the statutes referred to above: F. N. Judson, *Law of Interstate Commerce* (1905); W. L. Snyder, *Interstate Commerce Act and Federal Anti-Trust Laws* (1904) with *Supplement* (1906); F. H. Dixon, "Mann-Elkins Act" in *Quart. Jour. of Economics*, XXIV (1910), 593–633.

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INTERSTATE LAW AND RELATIONS

General Principles.—The member states of the American Union are constitutionally related to one another only through the Federal Constitution. Except as they are thus united, they stand towards one another as foreign sovereignties; that is, the laws of each have, of themselves, no force beyond the borders of the government enacting them, and no state official may exercise the authority of his office, nor may any writ of a state be effective, beyond such territorial limits. Except, then, as this general condition of interstate affairs is modified by the provisions of the articles of Union, the relations of the states are controlled by the general principles of comity, and of private international law, which obtain between the independent civilized nations of the world.

The first effect of the union of the states into a single sovereign state is, of course, to render them, for all national purposes, parts of a single political whole. To this extent their several governments constitute but parts of one great government, their several areas mark out administrative districts of a national territory, and their citizen bodies are but fractions of the political aggregate known as the people of the United States. Thus the laws of Congress operate through out all the states, and the writs of federal courts run wherever the national sovereignty extends.

In several important respects, the Constitution, with reference to matters which are left within the exclusive control of the states, provides for a modification of interstate relations, as they would exist under the general principles of public and private international law. In the first place it provides for the extradition of all persons fleeing from the justice of one state into another (Art. IV, Sec. ii, ¶ 2). It has indeed been determined that the obligation of the asylum state to surrender a fugitive from justice (*see* Extradition, Interstate) is not one which may be compelled by the Federal Government, and of course, not by the state from whose jurisdiction the demanded one has fled. But the constitutional provision is still of very great value in that, authorizing as it does extradition in all cases, it makes special extradition agreements unnecessary, and, in fact, extradition is very seldom refused.

Interstate Comity.—In the second place the Constitution provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" (Art. IV, Sec. ii, ¶ 1). The importance of this provision it is impossible to overestimate. Speaking with reference to this point, and to the intent of the requirement, the Supreme Court in Paul *vs.* Virginia (8 *Wall.* 168), says: "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with the citizens of other states, as far as the advantages resulting from citizenship in those states are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it insures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. Indeed, without some provision of the kind, removing from the citizens of each State the disabilities of alienage in the others, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

The privileges and immunities (*see*) which are thus, within each state, given to all persons whether they be citizens of that state or of another state of the Union, include generally the private rights of person and property. They do not include political privileges, nor those special proprietary rights, such as a share in the use of state property, which may be said to be owned in common by the citizens

of the state. That this comity clause does not enable a citizen to carry with him into another state the special privileges and immunities which he may have received under the laws of his own state, scarcely needs to be said. As the court says in the case already quoted, "It was not intended by the provision to give to the laws of one state any operation in other states. They can have no such operation, except by the permission, express or implied, of those states."

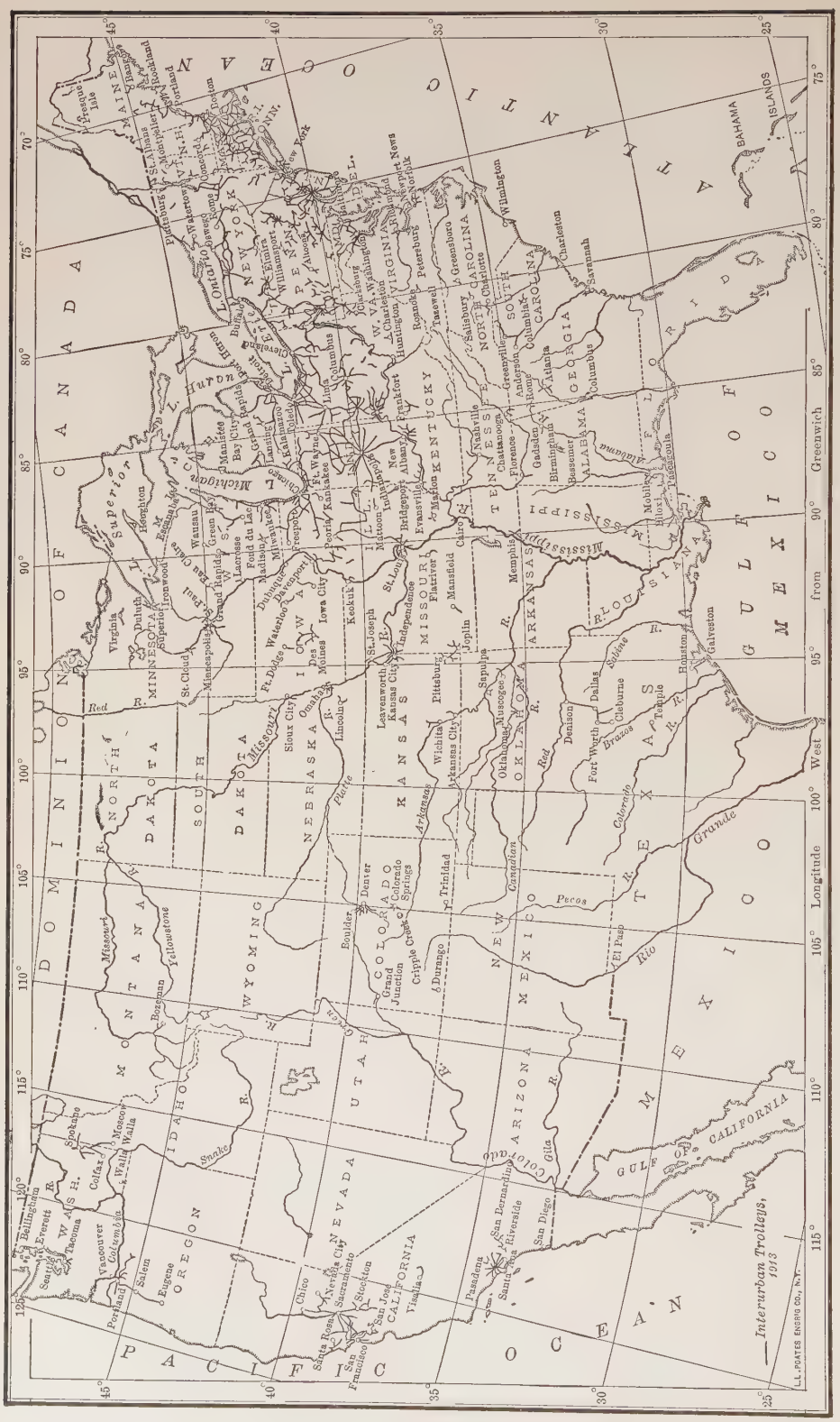
Foreign Corporations.—Corporations (*see*) are not persons in the sense of the word as used in this comity clause, and therefore they can obtain no benefit from its provisions. Hence, it follows that, generally speaking, no state is compelled to permit a corporation, chartered by another state, to do business within its limits; or, if it does grant this permission, it may do so upon such conditions as it may see fit to impose. This is the general principle with reference to the extent of a state's power over foreign corporations, that is, corporations not chartered by itself. In operation, however, the rule is subject to important qualifications—qualifications which arise out of the necessity of the states to respect federal rights and privileges. In the first place, no state may, upon any grounds, exclude from its borders corporations chartered by the National Government, nor may they prevent state corporations from performing federal functions, as, for example, the carriage by railways of national troops or munitions of war. The chief limitation upon the power of the state to deal with foreign corporations arises, however, from their constitutional inability to regulate or restrain interstate and foreign commerce (*see* INTERSTATE COMMERCE AND CASES). In no way may they prevent a foreign corporation, any more than they can prevent a citizen of another state, from entering or remaining within their respective limits for the transaction of interstate commerce. Though this leaves them, generally speaking, free to attach whatever conditions they may see fit, whether by way of taxation or otherwise, to the permission to foreign corporations to do a wholly local or intrastate business within their limits, even here it would seem that where the corporations are also engaged in carrying on an interstate or foreign commerce business, the condition cannot be one which in effect, whatever may be its form, does impose a burden upon such interstate and foreign business. This is declared in Western Union Telegraph Co. *vs.* Kansas (216 *U. S.* 1), decided in 1910. The doctrine of this case is difficult to harmonize with a series of cases, the last of which is that of Security Mutual Life Insurance Co. *vs.* Prewitt (202 *U. S.* 246) in which it is held that the permission to a foreign insurance corporation to do business within a state may be withdrawn in case that company exercises its federal constitutional right to remove into a federal court a suit brought against it in a state court, and that the state may by statute provide that this revocation shall be made.

Though not persons (*see* PERSON, LEGAL SENSE) within the meaning of the comity clause, corporations are persons within the meaning of the clause of the Fourteenth Amendment that "no State shall deprive any person of life, liberty or property, without due process of law." Hence, foreign corporations are, in this respect, as much protected against oppressive action upon the part of the state in which they do business or have property interests as are corporations created by those states.

Full Faith and Credit.—The first section of Article IV of the Federal Constitution further materially alters the general doctrines of private international law in their application to the states as related to one another by providing that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." As between independent nations these acts, records and judicial proceedings have no conclusive probative force when set up in a proceedings instituted in a state other than that of their origin. That is, they not only have to be proved as facts, but they may be attacked as having been fraudulently or otherwise improperly made, and the statement of facts which they contain may be questioned. The effect of the full faith and credit clause of the Constitution is to make the public acts, records and judicial proceedings of each state, when properly authenticated (the mode of authentication being declared by act of Congress) conclusive evidence of the facts which they state and of the determination of legal rights which they contain, when set up in a proceeding in any other state of the Union. The only way in which they may be attacked is by way of questioning the jurisdiction of the tribunal which declared them. It may, however, be said that the obligation imposed by this clause has an application only to civil proceedings. No state, in other words, is compelled to give its aid to the enforcement of the penal laws of another (*see* FAITH AND CREDIT).

With reference to the recognition of decrees of divorce in states other than those where rendered, the application of the full faith and credit clause has been especially difficult. This has arisen out of the fact that in very many cases the jurisdiction of the courts rendering the decrees has been doubtful with respect to the defendant or the plaintiff or sometimes as to both. Owing to a comparatively recent decision of the Supreme Court (Haddock *vs.* Haddock, 201 *U. S. Reports*, 562) the whole subject has become so complicated and technical that its discussion here is impossible.

Alliances between States.—Another respect in which the relations of the states of the



Interurban Electric Railway Systems in 1913

Union *inter se* are different from those which exist between independent states is that they are expressly forbidden by the Constitution to enter into any treaty, alliance or confederation, or, without the consent of Congress, to enter into any agreement or compact either with foreign states or with one another. This prohibition has not, however, been construed with absolute strictness, and, as a consequence, the states are permitted, without the necessity of first obtaining congressional permission, to enter into agreements with one another which are not of political significance, and which do not tend to create, in any real sense, a treaty of alliance or confederation. Thus they may agree as to the joint or harmonious control of boundary waters, or the enforcement of quarantine regulations, etc. This subject is especially considered by the Supreme Court in the case of Virginia *vs.* Tennessee (148 *U. S.* 503).

Suits between States.—A final respect in which the relations of the states of the Union to one another are other than those which obtain between independent states, is that they may sue one another, for this purpose instituting original proceedings in the Supreme Court of the United States. A considerable number of such suits have been litigated. Most of these have had for their purpose the settlement of boundary disputes. Others have, however, related to matters less political in nature. Thus one state has been permitted to implead another upon the ground that the defendant state had, by the construction of certain irrigation works, unjustifiably depleted the water of streams flowing into and through the plaintiff state. So also, another state, acting as *parens patriae*, has been held to have the right to question the power of another state to defile the waters of a river which furnishes water to the inhabitants of the complainant state. And, in another suit, a state has been permitted to sue, and indeed to obtain judgment against, another state upon certain bonds of the latter owned by the former (*see* ELEVENTH AMENDMENT). It has, however, been held that the maladministration of the laws of one state does not furnish ground for a suit by a state whose citizens, it is claimed, have been thereby injuriously affected (*see* STATES AS PARTIES TO SUITS).

Extra Legal Relations.—One further topic of interstate relations deserves mention. This is the opportunity which exists for states in an extra-legal, but none the less important and proper ways, to obtain, harmonious and mutually advantageous action with reference to matters of state interest and control. This is by means of joint meetings of commissioners and other agents from each of the states, the agreements obtained at such meetings furnishing the basis for identical or harmonious action on the part of the several states (*see* UNIFORM STATE LEGISLATION). Thus, within recent years several conventions of the governors of the states have been held, with results that have been very satisfactory (*see* HOUSE OF GOVERNORS). So, also, through the meetings of commissions on uniform legislation, the divergent laws of many of the states in several important respects, and especially as to the important subject of negotiable investments, have been brought into substantial uniformity. So, similarly, there are held at regular intervals, conventions of state railway commissions; state factory inspectors, etc. It would seem that there is abundant opportunity for beneficient increase in the work that may be done through this extra-legal joint action.

See COMITY, FEDERAL; DOUBLE CITIZENSHIP; EXTRADITION, INTERSTATE; INTERNATIONAL LAW, PRIVATE; PRIVILEGES AND IMMUNITIES OF CITIZENSHIP; UNITED STATES AS A FEDERAL STATE.

References: D. K. Watson, *Constitution of the U. S.* (1910); J. R. Tucker, *The Constitution of the U. S.* (1899), 627–634; W. W. Willoughby, *Constitutional Law of the U. S.* (1910); J. I. C. Hare, *Am. Constitutional Law* (1889); H. C. Black, *U. S. Constitutional Law* (3d ed., 1910); D. Rorer, *Am. Interstate Law* (2d ed., 1893). W. W. WILLOUGHBY.

INTERURBAN LINES. The interurban railroad of the present day is the outgrowth of the last twenty years. In its physical aspects it is a line having easy grades, a low degree of curvature, built principally upon a private, fenced-in, right-of-way that has as few grade-crossings as possible, making stops at stated points, one or more miles apart, at which station buildings are frequently erected, and constructed in a manner capable of high speed operation and the handling of heavy equipment and loads.

The interurban road of today is often built upon the same engineering standards as those of steam railroad construction, the chief difference being that the motive power is electricity rather than steam. The modern roads built according to these general standards, while securing the major portion of their income from the handling of passenger traffic, nevertheless, have developed a large and profitable freight and express business in both carload and less-than-carload lots.

The interurban road fills a distinct need which cannot be filled by the steam railroad. The economies of single car operation with electric power enable it to give a more frequent passenger service than with steam operation. The interurban road is essentially a local proposition, although in a constantly increasing number of cases freight traffic is interchanged with steam railroads, making the interurban, in a sense, a part of a national transportation system. Some of the large interurban systems, especially in New England, are owned by railroads, or by the same interests (see map on opposite page).

See Express Service, Regulation of; Railroad Commissions, State; Railroads, Electric; Railroads, Street; Transportation, Economic Principles of; Transportation, Regulation of.

References: E. Gonzenbach, *Engineering Preliminaries for the Interurban Electric Railway* (1903); W. C. Gotshall, *Notes on Electric Railway Economics and Preliminary Engineering* (1903); W. B. Brockway, *Electric Railway Accounting* (1906); G. S. Pease, *Freight Transportation on Trolley Lines* (1909).

Thomas Conway, Jr.

INTERVENTION. Definition.—The right of intervention in the affairs of a state by another state was formerly claimed, and the practice of intervention was common. It is now generally recognized that there exists an obligation of non-intervention, as correlative of the right of independence. Of intervention, Sir W. Harcourt said: "It is a high and summary procedure which may sometimes snatch a remedy beyond the reach of law. Nevertheless, it must be admitted that in case of Intervention, as in that of Revolution, its essence is illegality, and its justification is its success. Of all things, at once the most unjustifiable and the most impolitic is an unsuccessful Intervention."

Practice.—Intervention by one or more states in the affairs of other states has, however, been common on various grounds, especially during the nineteenth century, such as interventions to preserve the peace of Europe; to maintain the balance of power; or on the ground of treaty stipulations. Intervention by a state for the preservation of its independence has been regarded as an alternative for war which might, by this means, be avoided. The method of intervention may vary, as by arms, display of force, diplomatic negotiations, or less positive methods. The offer of good offices (*see*) or mediation (*see*) is not regarded as intervention, because in such cases the constraint put upon a state is merely moral and may be rejected without offense, while intervention is an invasion of independence.

Justification.—(1) Intervention for the maintenance of the principles of international law would even now be regarded with favor only in an extreme case. This was the case when several powers sent armed forces to China in 1900 to rescue the diplomats and other foreigners who were shut up in Pekin by the Boxer uprising. (2) Intervention has also been approved to prevent action in general contrary to the ideas of the time, as for the suppression of the slave trade. (3) Intervention has been resorted to in certain cases because sanctioned by the policy of a considerable number of states, as in many instances in regard to eastern affairs in Europe. (4) Intervention on the grounds of humanity has been used to cover many acts which would hardly be justified by the ostensible reason. Whether the ultimate results may not show that the action should have been taken is not the question involved in passing on the grounds of intervention. The plea of humanity should not be made to cover the purely selfish motives which have often actuated interventions. (5) Interventions under treaties of guaranty or other treaty stipulations have often been justified in the publication of the reasons, though it is doubtful whether such grounds are sufficient. (6) Intervention for the protection of religious, commercial and other rights of the citizens of one state when they are in another state has been undertaken by stronger states against weaker. Intervention on religious grounds has taken place in southeastern Europe most frequently and intervention on behalf of the commercial interests of citizens has been the ground of action in many instances by European against South American states. The "Drago Doctrine" (*see*) which led to the formulation of the Hague Convention of 1907 respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, is a refutation of the right of intervention for the collection of financial claims. (7) Intervention is, however, sanctioned on the European continent in the doctrine of the "balance of power," and in the western hemisphere in the "Monroe Doctrine."

See Belligerency; Conquest, Right of; Drago Doctrine; Good Offices; Insurgency; International Law; Monroe Doctrine; Neutrality, Principles of; Recognition of New States; War, International Relations in.

References: G. G. Wilson, *Int. Law* (1910), 55–73; L. Oppenheim, *Int. Law* (1912), I, 188 *et seq.*; J. B. Moore, *Digest of Int. Law* (1906), I, 2, *et seq.*

George G. Wilson.

INTIMIDATION. Intimidation at elections may be classed under three heads: (1) Physical intimidation, the kind usually meant by the term, which threatens the person or property of the voter, was especially common in the South when the Ku Klux Klan (*see*) attempted to drive negroes and union whites from the polls. It was not unknown in other communities before the secrecy of the ballot was secured. (2) Industrial intimidation has been practiced by some large employers of labor who tried to send their employees to the polls in a body and, under penalty of loss of work, to vote them *en masse*. Opposition to this form of coercion was one of the strongest forces leading to the introduction of the so-called Australian ballot (*see*). (3) The third kind of intimidation, threatened loss of social caste, has never been a very serious menace to the freedom of the voter, although it has undoubtedly existed in certain communities. Proper administration of the Australian system, however, by securing absolute secrecy of voting and removing all excuse for election agents at the polls has greatly reduced the

opportunities for intimidation of any kind. In recent years those who wish unduly to influence the result of elections have usually resorted to other means. See BALLOT; ELECTION SYSTEM IN UNITED STATES; FRAUDS, ELECTORAL. References: A. B. Hart, *Actual Government* (1903), 104; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 150; J. F. Rhodes, *Hist. U S.* (1910), VI, 180–184; H. W. Elson, *Hist. U. S.* (1905), IV, 330; W. Wilson, *Division and Reunion* (1909), 274; E. Stanwood, *Hist. of the Presidency* (1898), 333. J. M.

INVASION. An invasion is the entry of a country by a public enemy making war. Under its general war power (Art. I, Sec. viii, ¶¶ 11–14) Congress may provide for resisting invasion of any portion of the territory subject to the jurisdiction of the United States, and the President as Commander-in-Chief of the Army and Navy may employ the military and naval forces of the United States in resisting such invasion. It is also expressly provided that Congress may call forth the militia to repel invasions (Art. I, Sec. viii, ¶¶ 15, 16), and it is also provided that the United States shall protect each of the states against invasion; but in case of domestic violence the Federal Government has authority to interfere only on application of the state legislature or of the executive when the legislature can not be convened (Art. IV, Sec. iv). While the states may maintain a militia (Art. I. Sec. viii, ¶ 16), they are prohibited from engaging in war unless actually invaded or in such imminent danger as will not admit of delay (Art. I, Sec. x, ¶ 3). The only other reference to invasion in the Federal Constitution is that prohibiting the suspension of the writ of habeas corpus unless in cases of rebellion or invasion (Art. I, Sec. ix, ¶ 2). See INSURRECTION; WAR. E. McC.

INVENTIONS. See PATENTS.

INVESTIGATIONS, LEGISLATIVE

Constitutional Basis.—A legislative investigation is essentially a judicial act, not authorized by law but based upon the constitutional or inherent right of one or both houses to order it and incidentally to compel testimony. The function has its origin in Parliament, but under the American system of separation of powers its exercise is limited to matters expressly delegated by the Constitution or essential to the complete exercise of legislative power. In the federal (Art. I, Sec. v, ¶ 1) and state constitutions each house of the legislature is given control over its own members and elections, and the lower house (Art. I, Sec. ii, ¶ 5) may impeach executive and judicial officers, while the upper house (Art. I, Sec. iii, ¶ 6) sits as a court of impeachment (*see* IMPEACHMENT). Investigations incident to the exercise of these conferred judicial powers are a matter of course; but the extent of those under the legislative power is based upon no constitutional grant, and the right has been variously exercised and interpreted.

Congressional.—In Congress the decision of the Supreme Court in 1821, in Anderson *vs.* Dunn (6 *Wheat.* 204), was considered as sanctioning a wide range of investigation. But in 1880, in Kilbourn *vs.* Thompson (103 *U. S.* 168), it was decided that neither house had a general power of inquiry into the private affairs of a citizen, but must limit its investigations to matters within some express grant in the Constitution, or to those found necessary to carry into effect powers as there granted. When, however, the matter under investigation is the conduct of members, such as in the senatorial "sugar scandals" of 1894, the court has held that a witness may be compelled to disclose such personal actions as would throw light on the subject (*ex parte* Chapman, 166 *U. S.* 611). Whether the houses of Congress have the right to compel testimony upon private affairs within their restricted legislative power has never been directly decided; but in Interstate Commerce Commission *vs.* Brimson (154 *U. S.* 477) the Supreme Court, in 1894, upheld the right of Congress to authorize the commission to send for persons and papers, as this commission is used by Congress to obtain the "full information necessary as a basis of intellectual legislation." Such an investigation into private affairs, however, must be material to the matter of interstate commerce. Moreover, it has been a general practice for either house to coerce answers in investigations upon legislative matters which it considered within its province. In 1859 the Senate imprisoned as for contempt a witness who refused to testify in the inquiry into the Harper's Ferry raid; for the resolution authorizing the investigation had ordered the committee making it to "report whether any and what legislation may . . . be necessary, on the part of the United States, for the future preservation of the peace of the country or for the safety of the public property."

State Legislation.—No such restriction of the field exists in state investigations; for, unless prohibited by the state or Federal Constitution, a legislature may frame statutes upon any matter of human activity, and where it may legislate it may seek information on which to base law. There has, however, developed a tendency to inquire into the method and pur-

pose of the examination, and wherein lies the power to make it. A standard case is that of People *vs.* Keeler (99 *N. Y.* 463), decided in 1885. The court held that an investigation of the department of public works of New York City, ordered by the senate alone, was the exercise of a "necessary incident of the sovereign power of making laws and . . . often indispensable," but if the investigation had been merely for a political purpose, to subject the body to public animadversion or to vindicate it, where no legislation was intended to result and, the legislature having no power to put the officials on trial, the proceedings must necessarily end with the investigation, it would not have been a constitutional legislative proceeding. Incidental political purpose will not condemn an investigation, such as an inquiry into the working of a primary election law, so long as the matter is within the dominion of public purpose and general interest and the hearings are held with a view to enlightening the legislature (State *vs.* Frear, 138 *Wis.* 173). As investigations have usually been ordered when one party controlled the house which directed the inquiry and the other party the body investigated, the political purpose is too often evident, and the result aimed at the formation of public opinion rather than the formulation of legislation; but at least legislative amendment must be the avowed purpose of the probe, or the information gathered must be capable of usefulness in that direction. In the resolution for the Lexow investigation of the police of New York in 1894 such legislative purpose was stated, but Governor Flower vetoed an appropriation for it because he considered that it had every appearance of being a misuse of the legislative power "for the manufacture of political capital or the division of political patronage." The results of the investigation, thanks to Goff, the counsel, rather than to any purpose of the state senate in ordering it, were far reaching but they were not accomplished through any direct legislation. From the investigation of the railroad riots in Pennsylvania in 1877 no legislation seems to have been intended, yet the inquiry was entirely a proper one. On the other hand, the legislative results of the Armstrong investigation of insurance companies in New York in 1905 were of the greatest importance. It will probably never be possible for the courts to lay down any definite rule as to what constitutes a legitimate legislative examination.

By a Single House.—The right of a single house to order such an inquiry was not questioned until 1906. Then the Ohio supreme court, in State *vs.* Guilbert (75 *Ohio St.* 1), decided that the powers of the separate houses are not general, like the legislative power of the entire general assembly but only such as specified, and that there is no express power for either house to make a general legislative inquiry; therefore an investigation of the municipal government of Cincinnati ordered by the senate was illegal. This reasoning of the court is equally applicable to an investigation ordered by a concurrent resolution; hence when, in 1908, other investigations were desired they were ordered by joint resolutions having the force of laws. This decision is probably too extreme to be followed generally, but it shows the tendency to limit the power.

Testimony and Contempt.—Investigations cannot be efficient without the power to compel testimony. In many of the constitutions each house is authorized to enforce obedience to its processes: the constitutions of Florida and Mississippi give to each house the power to compel the attendance of witnesses; those of Kentucky and of Oklahoma give power to punish for contempt; and the states generally have statutes which deny to witnesses the right to refuse to testify on the ground of self-incrimination. This is based on the idea that the investigation is only an inquiry, and in legislative matters entirely impersonal, aiming at the amendment of laws and not at the enforcement of them. For the same reason, and in order to avoid running counter to the constitutional prohibition against compelling a man to be a witness against himself, it is further provided that the witness shall not be prosecuted because of the testimony, except for perjury. In Congress, under recent decisions, the power of contempt is limited to cases involving the right of either house to punish its own members, to compel attendance of witnesses in election and impeachment cases, and in cases which may involve the existence of the house. Beyond these, contumacy cannot be punished except through the courts. It has been made a misdemeanor (Rev. Stat. §§ 102–104), applicable in cases of general legislative inquiry and also as an additional punishment in cases where contempt may still be cited.

Committees.—Investigations may be made by either house as a whole, but almost invariably committees are employed. The power thus to delegate the right is generally acknowledged, and in some of the state constitutions is expressly affirmed. The standing committees sometimes hold hearings, but no committee can "send for persons and papers" without express authority from its house. In Maryland one committee has such authority from the constitution. A special investigation may be assigned to a standing committee, but usually a special committee is created. The resolution states the reasons for the inquiry, and the powers and duties of the committee, which may be a committee of one house or a joint committee ordered by a concurrent resolution. A committee has the power to issue subpoenas and to administer oaths; but usually it can only certify the contumacy of the witness to the house for punishment, although in West Virginia a committee sitting during recess may punish, and in Oklahoma at all times. Ex-

penses may be met out of a contingent fund or by special appropriation, and such an appropriation has been held to legalize an investigation otherwise unauthorized (*In re Davis*, 49 *Pac. Rep.* 160).

Committees of investigation may not sit except during the meeting of the legislature unless authorized to do so; this authority is usually given with directions to report to the next meeting of the legislature or to the governor. Committees should not sit beyond the lifetime of the legislature ordering them, but this rule has been violated even by Congress. The right to sit after adjournment has been questioned. In *ex parte* Caldwell (55 *S. E. Rep.* 910) the West Virginia court held, in 1906, that a committee appointed by one house had no power after the legislature adjourned; that such power could only reside in a committee appointed by joint resolution, as this would be like a statute. Moreover, both houses might meet again, whereas one house could not. A committee authorized by law stands upon an entirely different plane from one based on general parliamentary right.

See COMMITTEE SYSTEM; CONGRESS.

References: A. C. Hinds, *Precedents of the House of Representatives* (1907–1908), III, chs. liv, lv, and index, title Investigations; F. W. Whitridge, "Legislative Inquests" in *Pol. Sci. Quart.*, I (1886), 84–102; J. A. Lapp, "Legislative Investigations" in *Am. Pol. Sci. Rev.*, IV (1910), 68 ¶ 73. Additional cases: *In re* Pacific Railroad Commission, 32 *Fed. Rep.* 251; Counselman *vs.* Hitchcock, 142 *U. S.* 547; Brown *vs.* Walker, 161 *U. S.* 591; Marshall *vs.* Harwood, 7 *Md.* 466; *Ex parte* McCarthy, 29 *Cal.* 395; People *vs.* Webb, 5 *N. Y. Sup.* 855. Reports of investigations can be found through R. R. Bowker, *State Publications* (1899–1908). D. M. MATTESON.

INVOLUNTARY SERVITUDE. The involuntary servitude which is prohibited by the Federal Constitution (*see* THIRTEENTH AMENDMENT) includes not only a condition of absolute slavery but also such legal or social conditions as involve the enforcement by criminal punishment or other legal proceedings of contractual or other obligations to render personal services. It does not include the obligations to render services involved in recognized legal relations of superiority and dependence such as those of parent and child, guardian and ward, master and apprentice. In short, the law recognizes the binding force of obligations to render service either resulting from legal relations of dependency or from contractual obligations voluntarily assumed, but it does not recognize the right either on the part of a superior in authority or one who is entitled by contract to have the services of another to interfere with the fundamental principles of personal liberty. See LIBERTY, LEGAL SIGNIFICANCE OF; PEONAGE; SLAVERY.

E. MCC.

IOWA

Early History.—The Iowa country was first explored by Marquette and Joliet in June, 1673. As a part of the province of Louisiana it was successively under the sovereign jurisdictions of France (to 1762), Spain (1762 to 1800), France (1800 to 1803), and the United States (1803 to date). Since 1803 the Iowa country has been under the following subordinate jurisdictions: the District of Louisiana (1804 to 1805); the Territory of Louisiana (1805 to 1812); the Territory of Missouri (1812 to 1821); the Territory of Michigan (1834 to 1836); the original Territory of Wisconsin (1836 to 1838); the Territory of Iowa (1838 to 1846); and the State of Iowa (1846 to date). From 1821 to 1834 the Iowa country was without a local constitutional status.

The earliest white settlements were made during the period of Spanish jurisdiction; but it was not until the coming of the Langworthys to the Dubuque mines in 1830 that the permanent settlelment of Iowa may be said to have commenced. On June 1, 1833, the Iowa country was actually opened to settlement, following the Black Hawk Purchase of September 21, 1832. After June 1, 1833, the population increased rapidly. Settlers came from all parts of the Union. According to the first census the inhabitants numbered 10,531 in 1836. In 1838 there were 22,859; 674,913 in 1860; 2,231,853 in 1900; and 2,224,771 in 1910.

The earliest government in Iowa consisted of the extra-legal organizations of the settlers. On the 17th of June, 1830, the miners at Dubuque adopted a simple code of fundamental law. In other parts of the Iowa country "land clubs" or "claim associations" were organized for the protection and government of the early settlers, who were called "Squatters." The constitutions, by-laws, and resolutions of these organizations, have sometimes been referred to as the "Squatter Constitutions." Altogether squatter government in Iowa succeeded in maintaining order and substantial justice on the frontier.

Territorial Government.—Actual constitutional government was inaugurated with the incorporation of the Iowa country into the territory of Michigan by an act of Congress in 1834 and the establishment of the original counties of Dubuque and Des Moines and the original townships of Julien and Flint Hills by the Michigan Legislative Council in Septem-

ber, 1834. From 1834 to 1836 the Iowa country formed an integral part of the Territory of Michigan. From 1836 to 1838 the government and laws of the Iowa country were those of the original territory of Wisconsin. On July 4, 1838, the separate territory of Iowa was established under an act of Congress approved June 12, 1838. Under this act the people were guaranteed all the rights, privileges, and advantages granted to the inhabitants of the old Northwest Territory under the provisions of the Ordinance of 1787; and they were entitled to a delegate in Congress. The governors of the Territory of Iowa were Robert

Boundaries of the State of Iowa, Showing Territorial Changes

Lucas (1838–1841), John Chambers (1841–1845), and James Clarke (1845–1846).

Constitutions.—Iowa was admitted into the Union on December 28, 1846. The constitution of 1846 was unsatisfactory chiefly on account of the restrictions placed upon banking corporations (which by article 9 were practically prohibited) and the difficulties placed in the way of amending the provisions of the constitution itself which could be accomplished only by means of a constitutional convention. Accordingly a new constitution was drawn up by a convention at Iowa City and adopted by the people in 1857. The question whether other than white persons should be admitted to the suffrage, separately submitted, was voted down by the people. Although the question of revision has been submitted to a vote of the people regularly every ten years the constitution of 1857 has never been subjected to revision since its adoption. It has, however, been amended at five different times (1868, 1880, 1884, 1904, 1908) in minor particulars.

Present Government.—In the government of Iowa under the Constitution of 1857 there is little that is peculiar or unusual. The general government of the state is organized upon the tri-partite principle. The legislative power is exercised by a general assembly composed of a senate of 50 members elected for a term of four years and a house of representatives of 108 members elected for a term of two years. The regular sessions of the general assembly are biennial. The executive and administrative power is confided to a governor, a secretary of state, a treasurer, an auditor, an attorney general, and a superintendent of public instruction —all of whom are elected for a term of two years. Besides these executive departments there are numerous statutory boards and commissions charged with the administration of special laws or phases of government. Chief among these are: (1) the Executive Council composed of the governor, secretary of state, treasurer, and auditor; (2) the Board of Control of State Institutions (three members) hav-

ing charge of the charitable and penal institutions of the state; (3) the Board of Railroad Commissioners (three members) having charge of the administration of the laws relative to railway and express companies; and (4) the State Board of Education (nine members) having in charge the state university, the state College of Agriculture and Mechanic Arts, the Iowa State Teachers' College, and the College for the Blind. The judicial power is confided to an elective judiciary consisting of a supreme court, district and superior courts, and justices of the peace.

Local government in Iowa is organized on the county-township or commissioner plan. In each of the ninety-nine counties there is a board of from three to seven supervisors, elected in some counties at large and in others by districts. The other county officers are: auditor, treasurer, recorder, clerk of court, attorney, sheriff, coroner, engineer and superintendent of public schools. In each township is a board of three trustees, one assessor, one clerk, two justices of the peace, and two constables—all elected by the people.

The municipalities of the state are classed as: (1) cities of the first class (having a population of 15,000 or over); (2) cities of the second class (population between 2,000 and 15,000); (3) towns (population under 2,000). In the three classes the government is very much the same, consisting chiefly of a mayor and council elected by the people. A somewhat different form of municipal government, known as the "Des Moines Plan," may be adopted by a vote of the people in cities of 2,000 inhabitants and over. This plan, which was first adopted by Des Moines in 1908, is a revised form of the Galveston Plan. This form of municipal government has already been adopted (June, 1913) in the following cities: Burlington, Cedar Rapids, Des Moines, Fort Dodge, Keokuk, Marshalltown, Ottumwa and Sioux City. (*See* COMMISSION SYSTEM OF CITY GOVERNMENT.)

For more than fifty years the politics of the state have been dominated by the Republican party—with the exception of the years 1890–1894, when the office of governor was filled by a Democrat. Recent state legislation has been characterized by the adoption of such "progressive" measures as the two cent fare act and the compulsory state-wide system of primary elections for the nomination of state and local officers, including United States Senators but excluding the justices of the supreme and district courts. The most important political problems now pressing for solution are: tax reform; an adequate employers' liability and workman's compensation act; a corrupt practices act; the control and regulation of public utilities; and the perfection of the primary election law.

See COMMISSION SYSTEM OF CITY GOVERNMENT; CONSTITUTIONS, STATE, CHARACTERISTICS OF.

References: F. E. Horack, *The Government of Iowa* (1911); B. F. Shambaugh, *History of the Constitutions of Iowa* (1902), *Documentary Material Relating to the History* (1895–1901); *Iowa Biographical Series* (1907–1912); *Iowa Journal of History and Politics* (1903–1912); *Iowa Economic History Series* (1908–1912).

BENJAMIN F. SHAMBAUGH.

IRON-CLAD OATH. A name given the stringent oath of office prescribed by Congress in 1862 and applied at the close of the Civil War for office holders in the reconstructed states. It aimed at the exclusion of all who had participated in the "rebellion." **See** RECONSTRUCTION. **Reference:** W. MacDonald, *Select Statutes* (1903), 65.

O. C. H.

IRREPRESSIBLE CONFLICT. William Henry Seward (*see*) used these words in a speech at Rochester, New York, October 25, 1858. Dwelling on the irreconcilable antithesis between slavery and freedom, he said: "It is an irrepressible conflict between opposing and enduring forces, and it means that the United States must and will, sooner or later, become either entirely a slave-holding nation, or entirely a free-labor nation." This was similar to the doctrine of Lincoln's "house divided against itself" speech delivered the previous June. It did not mean that war must come but that the forces of slavery and freedom were necessarily in continuous warfare. **See** SLAVERY CONTROVERSY. **Reference:** F. K. Lothrop, *William Henry Seward* (1899), 186.

A. C. McL.

IRRIGATION AND IRRIGATED LANDS

Need of Irrigation.—One-third of the United States is arid, and in its natural state is incapable of producing useful crops. Only within comparatively recent years has it been realized that considerable areas of this desert land can be developed for agricultural purposes by the conservation and use of flood waters of the streams issuing from the mountain masses. The recognition of this fact in federal laws and operations has resulted in one of the larger practical applications of the principles of conservation made possible under the administration of President Roosevelt and largely by his personal interest.

The permanent settlement of the United States began on the eastern or humid side of

the country and was made by men who came from similar European regions where agriculture is dependent upon rainfall and surface water. Though this has been considered the normal condition of crop production, in the United States, it was preceded in Asia and in the arid regions around the Mediterranean, by control of the waters and their artificial application to the fields at the times of need. To the soil-tillers of these older countries as to the dweller in the arid regions of America, dependence upon rainfall for crops is considered a poor substitute for irrigation.

Deficiency of rainfall usually occurs in a country where there is a large amount of sunshine which gives life to the plants, and if moisture can be supplied in proper times and quantities, the growth of the plants is at the best in such regions.

It is usually assumed that from 15 to 20 inches of annual rainfall is necessary for the successful cultivation of the ordinary crops. If, however, most of it falls during the winter and there are prolonged summer droughts, the deficiency must be supplied during the growing season even though the total annual amount appears to be sufficient. The eastern half of the United States has usually enough rainfall to insure fair crops. The greater part of the western half has so little precipitation that fully two-thirds of its extent is classed as arid.

Defects of the Land System.—Nearly all of the present area of the continental United States, outside of the 13 original states and Texas, once belonged to the people of the United States, and was at the disposal of Congress. The laws respecting the public domain were drawn upon the assumption that the humid conditions of the East applied everywhere. The methods of land survey and subdivision, the requirements of residence and cultivation, were all based upon this conception. As the lands were taken up progressively from east to west, and the settlers encroached further and further upon the sub-humid, the semi-arid, and finally upon the truly arid regions, it was found that the land laws which were admirable for the Ohio and Mississippi valleys were entirely unsuited for the Rocky Mountain regions.

Hence arose a conflict between the natural conditions and those artificial requirements of legislation. The growing population of the United States must have homes, and the industries which could be carried on within the arid region required possession of the lands. Since they could not be homesteaded or otherwise taken up in full compliance with the laws, and must be obtained in some way, there arose a systematic and widespread evasion of the letter of the law. Vast tracts of public domain passed into the hands of cattle men and lumbermen, through shadowy compliance on the part of their employees with the requirements of residence and cultivation.

The tardy development or adaptation of the land laws was accompanied by an equally unsatisfactory growth of laws governing the distribution and control of water needed for the irrigation of the dry lands. The states containing semi-arid land naturally adopted the laws of their sister states to the east, which were modelled upon the common law of England, where there is water enough and to spare for every common need.

The theory of the water laws was that the natural streams should be permitted to flow undiminished in quantity and unchanged in quality, each landowner bordering upon the stream or riparian proprietor having the right to enjoy the use of the stream within these requirements. In the arid region, however, this was obviously impossible, as the very conditions of life demanded that water be taken from the natural streams and utilized or consumed in the production of crops without return to the water course. Recognition of this fact has been slow, and in some states of the West the riparian doctrines of the east were adopted at least in part or embodied in court decisions; while in other states there was general recognition of the doctrine of appropriation limited by beneficial use of water, but coupled with conditions which rendered difficult the ascertainment of rights.

Many of the lawyers and judges coming from humid states could not, at first, adjust their ideas to conditions new to them, and the resulting uncertainty as to the law and its application, were such that in some states the cost of litigation over the rights to the use of water has probably exceeded the cost of construction of the works. California, for example, is a large state embracing humid regions and ample rainfall, and also deserts where life is impossible without an artificial supply of water. The Spanish settlers introduced the idea of appropriation and diversion of the streams; while the English-speaking settlers from the humid east stuck to riparian conceptions. Judicial decisions were made, based at one time on the requirements of the arid portion of the states, at other times on precedents from England and the East; resulting in consequent confusion as to the ownership and use of water diverted for the development of the arid lands.

Federal Legislation on Irrigation.—The ideal system of controlling irrigation water is for the state to provide a method by which the quantity of water flowing in the various streams may be ascertained and the claims to this water may be recorded in systematic order, each claim being limited to the amount necessary for the purpose to which it is devoted. This fundamental doctrine is embodied in the federal reclamation or Newlands act of June 17, 1902—"that the right to the use of water . . . shall be appurtenant to the land irrigated, and beneficial use shall be the

basis, the measure, and the limit of the right." This conception is being slowly crystallized into law in the various states, even in California.

The question as to the control of water as between different states is one which has yet to be settled. Within the bounds of each state, it is practicable for that state, through its courts or executive machinery, to distribute the water to rival claimants in the order of priority, and with consideration of beneficial use. Where a river crosses state lines and several communities are concerned, it is evident that the power of the state ceases. It has been customary to assume that the upstream state will take all of the water it can, without regard to the needs of the communities down stream. Appeal by the persons injured to the Supreme Court of the United States has not as yet settled the many important questions (*see* Kansas *vs.* Colorado, 206 *U. S.* 46).

The first recognition by Congress of the peculiar conditions of water supply existing in the arid regions is contained in the general act of July 26, 1866, relating to the mineral lands, which attempts an adjustment of the use of water in hydraulicing. It is broadly drawn and includes agricultural practices and other uses and recognized rights to the use of water for mining, agricultural, manufacturing, or other purposes by priority of possession.

The following is a list of the principal laws of the United States bearing more or less directly on the appropriation of water and its use in irrigation:

July 26, 1866, Recognition of priorities (*Rev. Stat.* XIV, 23-39); July 9, 1870, Reservation of vested water rights in patents and reservation (*ibid* XVI, 23-40); March 3, 1875, Desert Land act for Lassen County, California (*ibid* XVIII, 29); March 3, 1877, Desert Land act (*ibid* XIX, 377); March 20, 1888, Authorizing irrigation investigations (*ibid* XXV, 526); March 2, 1889, Appropriation of $250,000, reserves right of way for canals constructed by the authority of the United States (*ibid* XXVI, 391); March 3, 1891, Modification of Desert Land law, provision for rights of way (*ibid* XXVI, 1095); August 18, 1894, Carey Act (*ibid* XXVIII, 372); January 21, 1895, Rights of way for canal (*ibid* XXVIII, 635); May 14, 1896, Rights of way for electric power purposes, etc. (*ibid* XXIX, 120); June 11, 1896, Amendment of Carey Act (*ibid* XXIX, 434); January 13, 1897, Reservoirs for watering livestock (*ibid* XX, 484); February 26, 1897, For the use of reservoir sites (*ibid* XXIX, 599); May 11, 1898, Right of way act (*ibid* XXX, 404); Feb. 15, 1901 Right of way through reservations (*ibid* XXXI, 790); June 17, 1902, Reclamation Act (*ibid* XXXII, 388).

Individual Irrigation.—The United States as the original proprietor of all of the arid lands was also owner of the streams arising in or among them. It is still the owner of from half to three-quarters of the area of many of the arid states, and is the greatest landed proprietor in them. This ownership includes the national forests from which arise most of the rivers used in irrigation and water power, and it is claimed that this and the possession of the gathering ground of the streams, gives it certain rights of control of the waters issuing from the public land area.

On the other hand, when the newer states were created, the United States recognized in each the fact that the waters of the state belonged to the people and that the state had the duty of apportioning these waters among the rival claimants. The United States also provided in various laws that title to the land can pass to the entryman after he has made proof of the reclamation of his farm. To do this, the claimant must withdraw from the stream the waters which are needed for this purpose.

State Irrigation.—When it became evident that the vast areas of the arid West could not be put to their best uses without irrigation, and after settlement had already been begun by construction of many small canals leading water by gravity from the streams, a law was passed known as the Desert Land Act (March 3, 1877) providing for the sale of desert lands.

Under the operations of this law, and its amendments, upwards of 20,000,000 acres have been entered and of this about 5,000,000 have passed to patent. The law originally permitted each claimant to take 640 acres, but this area was afterwards reduced to 320. It was found, however, that after the small and easily constructed irrigation canals had been built, it was not possible for the owners of separate small tracts of arid lands to get together and raise the necessary capital to build larger works. Out of this consideration came what is known as the Carey Act of August 18, 1894, which provides that to aid the public land states in the reclamation of desert lands and the settlement, cultivation, and sale, in small tracts to actual settlers, the Secretary of the Interior upon application from a state can contract to donate to the state free of cost, not exceeding a million acres of desert land, such as the state may cause to be irrigated and reclaimed; not less than 20 acres out of each 160 acres to be cultivated by actual settlers.

The states were somewhat slow in accepting the provisions of this act, and the ten-year limit within which they might receive the land was extended by act of March 3, 1901. On February 18, 1909, the provisions were extended to the territories, now states, of New Mexico and Arizona. In some of the states, notably Idaho and Wyoming, there has been rapid development under the terms of this act, promoted by state laws governing the use and control of the water. Where the acceptance of the act was dilatory or the state laws inadequate, the results have not been beneficial, and large amounts of money have been lost in speculative schemes.

Newlands Act (1902).—It became apparent that the largest development of the arid regions could not be accomplished either through the desert land act, which made provision for individual energy, or through the Carey Act, which permitted the states to enter the field

NATIONAL FORESTS
and
IRRIGATION PROJECTS
1910
National Forests.
Proposed National Forests.
U.S.Reclamation Service Irrigation Projects.
Private Irrigated Areas.
L.L. PLATES ENGRS CO., N.Y.
Longitude 100° West from 95° Greenwich
CANADA
ATLANTIC OCEAN
PACIFIC OCEAN
GULF OF MEXICO
MEXICO
Lake Superior
Lake Michigan
Lake Huron
Lake Erie
Lake Ontario
Missouri
Mississippi
Ohio
Rio Grande
Colorado
Snake R.
Yellowstone
Arkansas
Red R.
MINNESOTA
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
IOWA
WISCONSIN
ILLINOIS
MICHIGAN
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
VERMONT
N.H.
MASS.
CONN.
MONTANA
WYOMING
IDAHO
NEVADA
UTAH
ARIZONA
NEW MEXICO
TEXAS
OKLAHOMA
LOUISIANA
WASHINGTON
OREGON
CALIFORNIA
DOMINION OF
PROPOSED WHITE MTN. FOREST
PROPOSED APPALACHIAN FOREST
NATIONAL FOREST

of development. In many localities interstate or international problems were involved, or first cost made the work prohibitory. Hence, on June 17, 1902, Congress passed what is known as the Reclamation or Newlands Act, which appropriates to be expended directly by the government, in the reclaiming of arid lands, the money obtained from the disposal of public lands in the western states. From 1902 to 1913, this fund amounted to upwards of $80,000,000; and it has been expended by the Secretary of the Interior in the construction of large reservoirs, canals, and other works for irrigation of arid lands. This water, provided by storage of floods, is disposed of to the owners of small tracts, the area being limited to the amount necessary for the support of a family, and in no case to exceed 160 acres. The lands themselves thus reclaimed are not sold but are given away to homestead entrymen on condition of three years residence. The estimated cost of the water, however, must be repaid in not exceeding ten annual installments. This is usually about $40.00 per annum or $4.00 per acre per year for ten years, exclusive of cost of operation and maintenance of the system.

Great Irrigation Systems.—Among the more notable of the irrigation projects built under the terms of this act are the following:

The Salt River project in Arizona, designed to irrigate over 220,000 acres. So far, has been expended about $10,000,000, of which $3,500,000 was for the Roosevelt Storage Dam, one of the largest structures of its kind, which impounds 1,284,000 acre feet, consisting mainly of flood waters.

On the Colorado River between California and Arizona, is the Yuma project, designed to irrigate 130,000 acres. The principal feature of this is a remarkably long, low weir or overflow dam, nearly a mile in length (4780 feet) costing about $1,500,000, raising the water nearly 15 feet and diverting it into a large canal provided with sluices at the head to wash out the rapidly accumulating mud. The most interesting feature of this dam is the fact that it rests not on bed rock but upon river silt. The principal canal taken out on the California side continues for about 20 miles and then passes under the river by a siphon tunnel, 14 feet in diameter, excavated in the soft stone or indurated sands beneath the river bed.

In Colorado, the chief work is on the Uncompahgre project in the western part of the state, and consists of a tunnel six miles in length, taking the Gunnison River water under a high ridge. This tunnel delivers the water to large canals which encircle the valley of Uncompahgre River. The amount invested is approximately $9,000,000 and it will serve 140,000 acres.

In Idaho are two notable projects, one at Minidoka, consisting of a dam raising the Snake River 40 feet, diverting a portion of the water into canals on each side. Below the dam is a power house where electric power is developed and thence transmitted to a series of pumps which lift the water from the Southside gravity canal to successively higher elevations, irrigating lands lying 90 feet or less above the elevation reached by the gravity supply.

The other project, in Idaho, is supplied by the waters of Boise River. The principal storage dam, the Arrowrock, is being constructed at an estimated cost of about $7,000,000, to a proposed height of nearly 350 feet, being probably the highest dam in the world.

In Montana are several projects more or less noteworthy, the principal one being that by which the waters of Yellowstone River are taken out upon about 60,000 acres of land in eastern Montana, extending into North Dakota.

In Nebraska there is also an expensive project supplied by water stored behind the Pathfinder dam on the North Platte River in Wyoming. The cost of this dam was $1,700,000 and the total cost of the project, if completed according to the plans, will be considerably over $10,000,000.

In Nevada is the Truckee-Carson project, utilizing waters which flow from Lake Tahoe into Truckee River. In the lower course of this river the stream is diverted and carried across the divide to Carson River where there is being built a large storage reservoir to hold the accumulated floods of both streams. The waters thus obtained are being used upon extensive tracts of desert.

On the Rio Grande, in New Mexico, is being built a very large structure known as the Engle dam to create a reservoir of a capacity of 2,627,000 acre feet, designed to store the entire flow of that river and hold the floods of one year over until the next, or until the water is used or lost by evaporation. This stored water is to be diverted on 130,000 acres in New Mexico and 25,000 acres in Texas, a portion being turned to Mexico in accordance with the treaty with that country.

In the state of Washington, extensive works are being built at the headwaters of Yakima River to provide storage in the natural lakes and in the artificial reservoirs. The water thus held is being utilized in various canal systems owned by the government, the excess water being sold to other canals built by private enterprise.

In northern Wyoming is what is reputed to be the highest existing dam in the world, the Shoshone, 328 feet above foundations. It holds back the floods of the river of that name, which are diverted by a lower dam and carried through a tunnel about three miles long to the lands in the Big Horn Basin.

Outcome of the Irrigation Policy.—The following table shows in a general way the results of the operation of the reclamation act from

year to year, *viz.*, the receipts for the public lands and the amount expended:

Year	Receipts	Expenditure
1901–3	7,700,000	300,000
1904	8,700,000	1,500,000
1905	6,826,000	3,800,000
1906	4,800,000	7,100,000
1907	5,200,000	12,500,000
1908	7,900,000	11,800,000
1909	9,400,000	10,300,000
1910	7,800,000	9,800,000
1911	7,100,000	9,300,000
1912	6,150,000	11,400,000

The total expenditures exceed the receipts from sale of the public lands as some of the amount expended is recovered and immediately invested.

The Newlands act, under which the above described works were built, is the fruition of the ideals of conservation initiated largely by the energies of Major John Wesley Powell, for many years director of the U. S. Geological Survey, which were crystallized into effective laws and organizations by Theodore Roosevelt, and his intimate friend and assistant, Gifford Pinchot. In a large way, this policy involves the protection of the forests upon the mountain areas, for the purpose not merely of supplying timber, but for the beneficial influence upon the streams. It also includes the building within the mountain valleys and elsewhere of the large reservoirs for holding the floods until a time when the waters are needed for irrigation, water power, or other uses. As a result of this policy, great areas of otherwise useless mountain land have been set aside in national forests.

The outcome is that, if this work is continued and the funds invested in such work are returned by the beneficiaries, there will be a continually increasing development and larger and larger areas of land otherwise useless will be converted into highly productive areas capable of supporting a large population. The primary object of the law, while that of reclaiming the land, includes a far higher benefit, namely, that of making opportunities for citizens to secure small farms and homes where, as independent landowners and taxpayers, they become the most valuable support of the commonwealth.

By 1913, over 15,000 families had been supplied with water, 1,250,000 acres had been reclaimed, and works were under way for bringing water to a total of about 3,000,000 acres. There were also tentative plans looking to the construction of still larger works whenever funds become available.

In addition to the funds which are being derived from the disposal of public lands, and those which are coming back from the construction of works, it has been proposed to extend the work by the issue of bonds; by act of June 25, 1910, authority was granted to issue $20,000,000, but the money in hand appears to be ample to carry out the approved plans for the years 1911, 1912, and 1913.

See CONSERVATION; FOREST SERVICE; INTERSTATE LAW AND RELATIONS; PUBLIC LANDS AND PUBLIC LAND POLICY; PUBLIC WORKS, NATIONAL, STATE AND MUNICIPAL; STATES AS PARTIES TO SUITS; WATER SUPPLY.

References: H. M. Wilson, *Irrigation Engineering* (2d ed., 1896); W. G. Bligh, *Practical Design of Irrigation Works* (2d ed., 1910); U. S. Geological Survey, *Annual Reports* (since 1888), "Water supply and Irrigation Papers" in *ibid*, 1896; U. S. Reclamation Servive, *Annual Reports* (1901–1912); F. H. Newell, *Irrigation* (3d ed., 1912); F. H. Newell and D. W. Murray, *Principles of Irrigation Engineering* (1913); Special Committee of the U. S. Senate, "Report on the Irrigation and Reclamation of Arid Lands" in *Sen. Docs.*, 51 Cong., I Sess., No. 928 (1889); Irrigation Congress, *Annual Reports* (since 1900); W. H. Hall, *Irrigation Development in France, Italy and Spain* (1886); U. S. Census, *Irrigation Bulletins*, 1889–1899, 1909; *Am. Year Book, 1910*, 293, 304, *1911*, 425–433, *1912*, 255–261.

F. H. NEWELL.

ISOLATION POLICY. The American isolation policy was a theory based on the geographic insular situation and the early experience and self-confidence of the republic, whose earlier statesmen desired separation as far and as long as possible from European complications. It received stimulation, after 1793, from experience with France regarding the Treaty of Alliance of 1778. Under this policy, America, needing time to develop her institutions and unity, has usually declined joint action with European powers even in cases of the highest common interest. The exigencies related to the opening of the Far East, in which she actively participated, have been a departure from that policy.

That America practically has never known a policy of isolation from affairs really concerning her is evidenced by the treaty of 1778, by willingness to adhere to the European Armed Neutrality in 1780, and by Jefferson's willingness to consider alliance with England in 1803 and 1805.

The earlier policy of isolation was gradually modified by the course and exigency of events. When no longer tenable, it logically merged into a policy of paramount interest, emphasized especially since the Spanish War brought enlarged activity in international affairs.

See BALANCE OF POWER; COMMERCE, INTERNATIONAL; MONROE DOCTRINE; NEUTRALITY, PRINCIPLES OF.

References: A. C. Coolidge, *America as a World Power* (1908) ch. ii; A. B. Hart, *Foundations of Am. Foreign Policy* (1901), ch. i; J. B. Moore, *Digest of Int. Law* (1906), VI, 369–379; W. F. Reddaway, *Monroe Doctrine* (1898), ch. i; Richard Olney, "International

Isolation of the U. S." in *Atlantic Monthly*, LXXXI (1898), 577; bibliography in A. B. Hart, *Manual* (1908), § 175.

J. M. C.

ITALY, DIPLOMATIC RELATIONS WITH. Diplomatic relations with consolidated Italy began by the appointment of George P. Marsh as envoy and minister in March, 1861. Italy was friendly to the Union during the Civil War. In 1864 she conceded a naval depot on certain conditions; it was never established. Treaties relating to consuls and extradition were negotiated in 1868, and a treaty of commerce and navigation in 1871, supplemented by later treaties. In the struggle between the civil authority and the Pope, the United States refused to be involved, but held no official intercourse with the Pope after the abolition of his civil power.

Italian emigration to the United States, insignificant before 1870, but gradually increasing thereafter and rising rapidly in 1889, raised several questions affecting both the domestic policy and Americo-Italian relations, such as expatriation and naturalization; new immigrant laws; the padrone system; and consular inspection of emigrants at Naples.

In 1891 occurred an incident which opened grave international complications, and called attention to the obligation of the United States as a national unit in the enforcement of its treaty obligations. A New Orleans mob on March 15 forcibly entered the jail and shot several Italians who had been placed on trial for the murder (in the previous October) of Mayor Hennessey, who had been investigating the operations of the *Mafiosi*, an oath-bound secret society indigenous to Sicily. The Italian government promptly sent a protest to Secretary Blaine, who, expressing regret, urged Governor Nicholls of Louisiana to bring the guilty parties to justice. The Italian premier, probably influenced in aggressiveness by an approaching meeting of the Italian parliament, demanded summary punishment and indemnity. Blaine's explanation, that under the American dual form of government the institution of judicial proceedings in the case belonged entirely to Louisiana, was regarded as an equivocation. Without waiting for further failure of judicial proceedings in Louisiana, Baron Fava, the Italian minister, withdrew from Washington, leaving diplomatic relations practically suspended.

In 1892, the voluntary offer of indemnity by the United States, and the payment of over $24,000 from the diplomatic fund for this purpose, resulted in the renewal of friendly relations which have since continued—although occasionally affected by such incidents as the closing of the Italian immigration bureau at Ellis Island in 1898 and 1899, and reflections by the American industrial commission upon the integrity of Italian officials. Lynching cases similar to the New Orleans case occurred in Colorado in 1894 and in Louisiana in 1896. A new commercial treaty was negotiated with Italy in 1900 and an arbitration treaty in 1908.

See COMMERCIAL POLICY AND RELATIONS OF THE UNITED STATES.

References: E. B. Andrews, *U. S. in Our Own Time* (1903), 567–74; W. E. Curtis, *U. S. and Foreign Powers* (1892), ch. xvi; D. R. Dewey, *National Problems* (1907), 206–07; J. B. Moore, *Digest of Int. Law* (1906), I, 129–31, 608–16, III, 344–53, V, 344–46, 731, VI, 837–41; *Nineteenth Century*, XXIX (1891), 701–18.

J. M. CALLAHAN.

J

JACKSON, ANDREW. Andrew Jackson (1767–1845), seventh President of the United States, was born in Mecklenburg county, N. C., March 15, 1767. In 1788 he was admitted to the bar, and presently removed to Tennessee, where he became United States district attorney, member of the state constitutional convention in 1796, and later judge of the state supreme court, 1797–98. He was the first representative of Tennessee in Congress, and for a brief time was Senator. His defeat of the British at New Orleans in January, 1815, and some arbitrary actions on his part in Florida in 1818, made him a national figure. In 1823 he again became Senator. In the presidential election of 1824 he received the highest number of electoral votes, 99, but there was no choice, and J. Q. Adams was chosen by the House. In 1828 he was elected President, receiving 178 electoral votes against 83 for Adams. In 1832 he was reëlected.

The eight years of his presidency saw the rise and fall of nullification in South Carolina, the tariffs of 1832 and 1833, the overthrow of the United States bank, the settlement of long-standing differences with England and France, the public land crisis and deposit act, the formation of the Whig party, and the reconstruction of the Democrats; and in most of these events Jackson was the dominating force. He dictated the election of Van Buren in 1836. To the demoralization of the federal civil service which attended his advent he was indifferent, but his administration brought the Federal Government more directly than ever under control of the voters, at the same time that he largely freed the executive department from the control of either Congress or the courts. He died at the Hermitage, near Nashville, June 8, 1845. **See** BANK OF THE UNITED STATES, SECOND; DEMOCRATIC PARTY; PRESIDENT, AUTHORITY, AND INFLUENCE OF; PRESIDENTIAL ELECTORS; WARS OF THE UNITED STATES. **References:** W. MacDonald, *Jacksonian Democracy* (1906); J. S. Bassett, *Life of Andrew Jackson* (1911); W. G. Sumner, *Andrew Jackson* (rev. ed., 1898); J. Paton, *Life of Andrew Jackson* (1861); T. H. Benton, *Thirty Years' View* (1854–56). W. MacD.

JACKSON, ANDREW, CENSURE OF. Andrew Jackson was opposed to the second United States bank (*see*), and desired the government deposits removed, which could be done only at the discretion of the Secretary of Treasury. In 1833, William J. Duane succeeded McLane in the Treasury Department, but he was opposed to Jackson's plan. Jackson dismissed Duane from office. Taney succeeded, and carried out Jackson's plans. On December 26, Clay introduced in the Senate a resolution which was the basis of the Resolution of Censure, adopted in the Senate on March 28, 1834, by a vote of 26 to 20. This set forth that the "President, in the late executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both." Since the power of impeachment and trial is given to Congress, Jackson protested that it had no other power to punish him. The Senate refused to enter Jackson's protest on its journal. Senator Benton took up the cause of Jackson, and finally, by a vote of 24 to 19, an expunging resolution was passed. Black lines were drawn around the Resolution of Censure, and across it was written, "Expunged by order of the Senate, this sixteenth day of January, in the year of our Lord 1837." **References:** W. MacDonald, *Jacksonian Democracy* (1907), ch. xiii; T. H. Benton, *Thirty Years' View* (1874), I, 402–431. T. N. H.

JACKSON MEN. The name "Jackson men" was applied, for some years after 1820, to those who, while retaining for a time the name Democratic-Republican (*see* DEMOCRATIC PARTY), favored the election of Andrew Jackson (*see*) as President. The Jackson following was at first largely personal, but in the campaigns of 1824 and 1828 it came to be identified also with the new democratic principles for which Jackson, in opposition to the National Republicans (*see*), was supposed to stand (*see* JACKSONIAN DEMOCRACY). The reorganization of parties drew into the new Democratic party most of the Jackson men; and by 1832 the latter term ceased to be employed as a party designation. **Reference:** W. MacDonald, *Jacksonian Democracy* (1906). W. MacD.

JACKSONIAN DEMOCRACY. Between the political ideas of Jefferson, most commonly designated as Jeffersonian republicanism, and those of which Jackson was preëminently the embodiment there was, naturally, much in common. Both agreed in opposing aristocratic or oligarchical control in government, and in grounding political action upon the opinion of the majority of voters. Both opposed the cre-

ation of an office-holding class, and sought to reduce the practical activities of government to their lowest terms. Both favored economy in public expenditure, extinguishment of the national debt, and a tariff primarily for revenue. In the matter of constitutional interpretation both were strict constructionists, seeking to preserve the rights of the states against the encroachment of federal authority, and believing in the amendment of the Constitution to adapt it to new needs, rather than its extension by usage, judicial interpretation, or executive application; though neither of them hesitated at extra-constitutional action when, in their judgment, national exigency required it (*see* JACKSON, ANDREW, CENSURE OF).

To these primary conceptions of democracy Jackson made some significant additions. He was little inclined to doctrinaire statements of political theory, and for the most part gave expression to his political opinions only in connection with specific official acts. "The people" upon whom he professed to rely, and whose ideas he assumed to voice, represented the lower rather than the higher average of intelligence, property, and political aptitude; and the figures of a popular vote were less convincing than his own impression of what "the people" really desired. To the character of the civil service and the efficiency of administrative routine he was indifferent, save in clear cases of dishonesty; and he surrendered easily to the spoils system. He evinced hardly more than an elementary acquaintance with the principles of public finance; and his opposition to the Bank of the United States (*see*) represented less a hostility to that particular institution than a fear of monopoly and a distrust of banks as such. As between a tariff for revenue and a tariff for protection he took no decided stand, nor was he consistent in his opposition to internal improvements. On the other hand, his aggressive policy, joined to a vigorous use of the veto power, went far to reconcile democracy and executive domination, and raise the executive to a position of leadership which, save for brief intervals, it has ever since retained. **See** DEMOCRATIC PARTY; JACKSON, ANDREW. **References:** H. J. Ford, *The Rise and Growth of Am. Politics* (1898), chs. xiii–xvii; J. S. Bassett, *Life of Andrew Jackson* (1911); W. MacDonald, *Jacksonian Democracy* (1906), ch. xviii. W. MACD.

JAILS. **See** COUNTY JAILS; POLICE STATIONS AND LOCKUPS.

JAPAN, DIPLOMATIC RELATIONS WITH

Conditions and Principles.—An admixture of political with religious zeal in the seventeenth century missionaries created in Japan's rulers a distrust which resulted in an embargo on foreign intercourse, though the advantages of foreign trade were not wholly unappreciated. The advent of Perry with his wonderful ships and machines revealed the handicap of isolation. Traditional misgivings of the Japanese concerning possible aggression, strengthened by conscious ignorance of conditions in the outer world, were reflected in an under-current of hesitancy in the renewal and early development of foreign intercourse. Still the American principle of separate action, coupled with respect for Japanese sovereignty and sympathy with Japan's aspirations for complete autonomy, won the increasing confidence of the Japanese and faciliated diplomatic relations. That principle was consistently maintained except for emergencies created by Japan's anti-foreign agitation and internal disorders during the sixties.

Intercourse Opened.—The main motives for American insistence in opening intercourse with Japan were the rapid development of the Pacific coast after the gold discovery of 1848; the growing trade with recently opened China; importance in this trade and in whaling of accessible harbors in Japan for supplies and refuge; and sanguine estimates of commerce. Japan had haughtily repelled repeated efforts to open intercourse. Perry, dignified, determined, tactful, master of the methods of the Orient, commanding many mysterious "black ships," would neither depart nor negotiate through Nagasaki. Under orders to use no force, he yet secured proper reception of the President's communication to the Emperor requesting amity and intercourse, July, 1853. On his return, in 1854 the Shogunate, persuaded more by American power represented in ships and machines than by diplomacy, negotiated Japan's first treaty with a western nation (March 31, 1854). It accorded to the United States: peace; amity; ports at Shimoda and Hakodate where ships might obtain wood, water, provisions, coal, and might exchange goods; adequate protection of shipwrecked sailors and ships in distress; the residence of consular agents at Shimoda if deemed necessary by either government; and most favored nation treatment in the event of subsequently negotiated treaties.

Additional Treaties (1855–1860).—The patient, resolute, yet sympathetic diplomacy of Townsend Harris, first American consul-general and minister to Japan (1856–62), opened wider the door; secured the coveted rights of commerce withheld from Perry; and laid the foundations of diplomatic intercourse with the United States. The Shogunate, embarrassed by internal discontent, sought to temporize by obstruction and narrowly interpreting the

treaty. Harris, by persistence, solved the difficulties with a new treaty (June 17, 1857) which settled according to weight the disputed value of American coins; secured for Americans a right of permanent residence at Shimoda and Hakodate; stipulated the opening of an additional port at Nagasaki, the residence of a vice-consul at Hakodate, and the right of trial and punishment by consuls under American laws for Americans committing offenses in Japan—a claim which subsequently much offended Japanese susceptibilities. Having insistently secured audience of the Shogun and delivered the President's letter to the Emperor, Harris negotiated a third important treaty (July 29, 1858) which incorporated the above provisions and provided for mutual diplomatic representation at the national capitals; for consular representation at the open ports; for new ports at Kanagawa, Niigata, and Hiogo; for residence and trading privileges at the open ports of Yedo and Osaka; for opening consular courts to claims by Japanese creditors against Americans, and Japanese courts to claims by American creditors against Japanese; for granting full religious freedom and privileges to Americans; for incorporating customs regulations, including import duties at 5 to 35 per cent and export duties of 5 per cent, subject to revision after five years if desired by Japan. Ratification was effected at Washington by a special Japanese embassy, sent in appreciation, received with enthusiasm, in 1860.

Anti-foreign Agitation (1861–1874).—European nations secured similar treaties, and the treaty concessions afforded a pretext for attacking the decadent Shogunate. Conservative opposition, coalescing with a growing movement for restoration of the imperial dignity, took form in reaction and anti-foreign agitation with "honor the Emperor, expel the barbarians" as the watchword. Incident thereto was the assassination of Harris's secretary, the burning of the legation, and the compulsory withdrawal of American representatives from Yedo, together with a decree by the harassed Shogun to close the ports and expel the foreigners. Harris's successor, R. H. Pruyn, whose sympathies aroused the suspicions of other ministers, in concert with other representatives and supported by his government, insisted on observance of the treaties; and he obtained a treaty reducing duties (January, 1864).

Meanwhile, the reactionary lord of Choshiu fired on American and other ships passing Shimonoseki Strait. The United States acted in concert with other powers in bombarding the Shimonoseki forts and exacting indemnity (1864). This incident and the British bombardment of Kagoshima converted the leading reactionaries. Pruyn, acting with other representatives, proceeded with a powerful naval escort to Osaka and secured the imperial sanction (hitherto unobtainable through the Shogun), to the existing treaties (November, 1865). In concert with other ministers, the *ad interim* representative of the United States negotiated a fifth treaty (June, 1866), securing more liberal trade privileges and fixing duties on a 5 per cent basis. Harris secured treaty recognition that Japan "abolish the practice of trampling on religious emblems." Persecution of native Christians elicited firm representations through Minister Van Valkenburg (1868–72), and the release of the last victim in 1874. Religious tolerance thus secured, it was later formally sanctioned by the Constitution (1889).

Achievement of Autonomy (1875–1899).—Handicapped fiscally and politically by treaty-limited customs duties and by consular jurisdiction, Japan sought a general treaty revision on the basis of equality. A special embassy, entertained as guests of the United States, in 1872, received assurance that America would negotiate with a liberal spirit, but it failed in Europe. America conceded customs autonomy and the right to regulate the coasting trade, Japan to open two additional ports (July, 1878); but the treaty remained inoperative because it was to take effect when other treaty-powers concluded similar conventions. The American minister, against the other representatives, recognized Japan's right to enforce her own quarantine regulations (1879). America alone reimbursed the Shimonoseki indemnity, conceded Japan's claim for treaty revision in 1882, again readily assented in 1886 and acted effectively in 1894, by negotiating a treaty, effective in July, 1899 (other treaty-powers making similar treaties) to establish intercourse on a basis similar to that subsisting between western nations, except that most customs duties were specified for the term from 1894 to 1911, when tariff autonomy became complete. The uniform readiness of America to liberate Japan from treaty disabilities considered humiliating won grateful appreciation.

Other conventions provided for mutual reimbursement of certain shipwreck expenses (1880); mutual detention and extradition of criminals (1886, supplemented 1906); mutual protection of patents, trademarks and designs (1897); mutual protection of copyrights (1905, extended to Korea, 1908, and to China with respect to the contracting parties, 1908); arbitrating differences of legal nature or relating to interpretation of treaties (1908).

During the Russo-Japanese War, American representatives took charge of Japanese interests in Russia. In 1906, both countries raised their legations to embassies, the Emperor sent the President a letter thanking him for transmission through the State Department of contributions by Americans for famine relief. An exchange of notes in 1908 committed both countries to the maintenance of the *status quo* in Pacific regions and the "open door" in China. California's agitation for exclusion of

Japanese laborers, beginning in 1907, aroused indignation in Japan and fixed attention on the clause in the treaty of 1894, reserving mutual rights to regulate "immigration of laborers"—a clause deemed humiliating by the Japanese made sensitive through experience of the extraterritorial jurisdiction. A crisis was averted by the agreement of Japan in March, 1908, to require passports so as to restrict within narrow limits emigration of laborers to United States. A new treaty (February, 1911) supplanting the treaty of 1894 omitted the objectionable clause, Japan agreeing to maintain effectively the limitation "for the past three years exercised in regulation of the emigration of laborers to the United States." A later convention—Great Britain and Russia being parties—regulated the sealing industry (July, 1911).

In 1913 the question of the status of Japanese in the United States was again raised by the statutes of California and other states, excluding from the holding of lands those aliens ineligible to citizenship. Notwithstanding the refusal of passports to Japanese laborers by their government, 76,000 Japanese were shown, by the census of 1910, to have reached the United States. Despite the efforts of the federal administration and the protests of Japan, restrictive laws went on the statute book of the state of California.

See ALIEN; ASIA, DIPLOMATIC RELATIONS WITH; BALANCE OF POWER; CHINA, DIPLOMATIC RELATIONS WITH; COMMERCE, INTERNATIONAL; CONSULAR SERVICE; EXTRADITION, INTERNATIONAL; EXTRATERRITORIALITY; PROTECTION TO AMERICAN CITIZENS ABROAD.

References: F. von Wenckstern, *Bibliography of the Japanese Empire* (1895–1908); *Diplomatic Correspondence and Foreign Relations of the U. S.* (annual vols.), general index to same, 1861–1899, topic, "Japan"; W. M. Malloy, "Treaties, Conventions, Int. Acts, Protocols and Agreements between the U. S. and Other Powers, 1776–1909" in *Sen. Docs.*, 61 Cong., 2 Sess., No. 357 (1910), 996–1047; J. B. Moore, *Digest of Int. Law* (1906), V, ch. xxiv, 735–762; J. W. Foster, *Am. Diplomacy in the Orient* (1903), chs. v, vi, x; Inazo Nitobe, *Intercourse between the U. S. and Japan* (1891); Henry Dyer, *Dai Nippon* (1904), ch. xvi; F. V. Dickins, *Life of Sir Harry Parkes* (1894), II, chs. xxii–xxx, xxxiv, xxxv, xxxvii; S. G. Hishida, *Int. Position of Japan as a Great Power* (1905), chs. v, vi; W. E. Griffis, *Matthew Cailbraith Perry* (1887), 270–374, *Townsend Harris* (1895); Kiyoshi K. Kawakami, *Am.-Japanese Relations*, (1912), chs. xviii–xxiii.

E. H. VICKERS.

JAY, JOHN. John Jay was born in New York City, December 12, 1745, and died May 17, 1829. He was graduated from King's College and became a lawyer of note in New York City. As a member of the first Continental Congress, he drafted an address to the people of Great Britain which was adopted by Congress. The form of the constitution for New York, 1777, was largely due to his influence and upon the organization of the state government he became chief justice and organizer of the judiciary. In 1779, he was again sent to Congress and was president of that body for a short time, resigning in order to become minister to Spain. In June, 1782, he went to Paris to negotiate for a general peace. He proceeded to treat with the British representative, thus ignoring the instructions to the commission not to make a separate treaty with England. The final ratification of the Federal Constitution by New York was in no small measure due to his influence and at least five of the papers in the *Federalist* (*see*) were from his pen. Upon the organization of the United States Supreme Court, 1789, he was appointed Chief Justice and continued in that office until his resignation in 1795 to become governor of New York. In the meantime, 1794, he was sent as envoy extraordinary to England and succeeded in making the treaty which bears his name. Two cases in which he participated as Chief Justice were especially notable. In one decision an act of Congress which provided that applications for invalid pensions should be passed on by judges of the Supreme Court was declared unconstitutional. This was the first time that the Supreme Court declared an act of Congress unconstitutional. The other decision was that of Chisholm *vs.* Georgia (1793, 2 *Dallas* 419).

See CHIEF JUSTICES; CONTINENTAL CONGRESS; FEDERALIST PARTY; FRANCE, DIPLOMATIC RELATIONS WITH; JAY TREATY; NEW YORK; SUPREME COURT OF THE UNITED STATES.

References: W. Jay, *Life of John Jay* (1833); W. Whitelock, *Life and Times of John Jay* (1857); H. P. Johnson, *Correspondence and Public Papers of John Jay* (1890); G. Pellew, *John Jay* (1890).

J. A. J.

JAY TREATY. In April, 1794, when the House threatened non-intercourse against England, Washington apprehending danger of war sent Chief Justice Jay to negotiate a treaty to settle various irritating questions.

The treaty, concluded (November 19, 1794) after friendly informal conferences, provided for the withdrawal of the British posts south of the boundary; settlement of boundary disputes; determination of American liability for the British creditors' claims; and a joint survey of the Mississippi. It reasserted federal power over land titles in the states. It contained an agreement, limited to twelve years, concerning regulation of navigation and commercial intercourse; extradition of persons charged with certain crimes (murder and forgery); establishment of consulates; detention and capture of neutrals; and other questions of international law arising during war. It agreed that war between the two countries

should never be made a pretext for confiscation of debts or annulment of contracts between individuals, a provision which saved mililons to Americans in the War of 1812. In opposition to American principles of maritime war, however, it asserted that the neutral flag did not cover the enemy's merchandise, and vaguely acknowledged right of search. The British demand for cession of territory at the head of the Mississippi was refused.

The treaty was not satisfactory. Jay defended it as the best then attainable. Washington accepted it only as the choice between two evils. It was strongly opposed both at home and abroad. The Senate in special session, by exactly the necessary two-thirds vote, (secured by personal influence of Washington) June 24, 1795, ratified the treaty excepting Article XII, on West India trade, which was suspended. Ratifications were exchanged October 28, 1795, and the treaty proclaimed February 29, 1796.

The House, on Washington's declining to submit a copy of Jay's instructions, threatened to withhold the appropriation (about $90,000) necessary to execute the treaty. The motion to carry the treaty into effect passed in committee of the whole only by the casting vote of the Speaker (Muhlenberg), and in the House by 51 to 48. Congress made the necessary appropriations May 6, 1796, and Parliament on July 4, 1797. Two mixed commissions were appointed to settle claims.

See Boundaries of the United States, Interior; France, Diplomatic Relations with; Great Britain, Diplomatic Relations with; Jay, John; Maritime War; Neutrality, Principles of; Ratification of Treaties; Treaties of the United States; West Florida.

References: J. S. Bassett, *Federalist System* (1906), ch. ix; Alex. Johnston, *Am. Polit. Hist.* (1905), I, 147–58; H. C. Lodge, *Washington* (1898), II, ch. iv; J. B. Moore, *Digest of Int. Law* (1906), V, 699, 706, *Int. Arbitrations* (1898), I, 299–316; G. Pellew, *John Jay* (1898), ch. xi; E. Randolph, *Vindication* (1795); E. Smith, *England and America* (1900), chs. iii, iv; *North Am. Rev.*, XVII (1823), 142–80; bibliography in A. B. Hart, *Manual* (1908), § 176. J. M. Callahan.

JEFFERSON, THOMAS. Thomas Jefferson was born in Albemarle county, Virginia, April 13, 1743, and died at Monticello, July 4, 1826. Son of an up-country farmer, young Jefferson received the early training of a backwoodsman; but he was sent to William and Mary College in 1760 where he remained about six years. In 1767 he began the practice of law and was immediately successful. He joined the party of Patrick Henry at the beginning of the Revolution and drew the proposed instructions for the Virginia delegates to the first Continental Congress in such radical fashion that his paper was rejected, though it was reprinted in England where it won him the honor of being named in a bill of attainder. In 1775 the radical party in Virginia gained a stronger hold and Jefferson was named a delegate to the Second Continental Congress. The next year he drafted the Declaration of Independence and had the satisfaction of seeing his extreme views adopted by the thirteen united colonies or independent states. Meanwhile he had sent the Virginia convention a draft of a constitution thoroughly democratic in character. But this was rejected and in the election of delegates for the next session of Congress his name was "brought in at the lag end." He promptly resigned and stood for election to the new legislature. He was chosen for several up-country counties, but he accepted the commission of Albemarle. In the legislature he led a successful fight against the old régime, doing away with primogeniture, entails and the established church. He became governor in 1779, but was less successful and was glad to take up his work again in Congress whence he was sent in 1784 as minister to France. After five years in Paris he returned to the United States to accept the position of Secretary of State in Washington's first administration. He soon became an opponent of Hamilton and organized the Republican party which stood, in general, for the rights of the states as against the growth of the national power. But Jefferson made it democratic and was its first candidate for the presidency in 1796. Failing in the race for the first place he won the vice-presidency, from which position he fought strenuously the Alien and Sedition laws and other unpopular measures of the Adams administration. In 1800–1801 he was elected President, and began his reforms; he also purchased Louisiana in 1803, and in 1804 was reëlected almost without opposition. His embargo policy of 1807–08 was very unpopular and he retired in 1809. The remainder of his life was spent on his plantation at Monticello, though he found time to found and organize the University of Virginia. He died on the fiftieth anniversary of the Declaration of Independence. See Democratic-Republican Party; Jeffersonian Democracy; Political Theories of American Publicists, Early; Popular Government; Revolution, American, Significance of. **References:** H. S. Randall, *Life of Thomas Jefferson* (1858); P. L. Ford, Ed., *Thomas Jefferson's Writings* (1892–1899); W. E. Dodd, "Thomas Jefferson" in *Statesmen of the Old South* (1911).

William E. Dodd.

JEFFERSONIAN DEMOCRACY. Like many other phrases which have been made to serve partisan ends, Jeffersonian democracy has become overlaid with interpretations which obscure its original significance. Without attempting to describe Jefferson's political phi-

losophy, which is indeed nowhere set forth in self-consistent fashion in his writings, it may be said that the cardinal principle in his political creed was implicit confidence in the capacity of the people to govern themselves. Men by their constitutions, he insisted, are divided into two classes, "those who fear and distrust the people, and wish to draw all powers from them into the hands of the higher classes," and "those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, although not the most wise, depository of the public interests." Because of this fundamental conviction, Jefferson professed to abhor monarchy, hereditary or "artificial" aristocracy, and all forms of privilege. He was not averse to a natural aristocracy of virtue and talent, but he believed that the people if left to themselves would choose "the best." He defined a republic as "a government by the citizens in mass, acting directly and personally, according to rules established by the majority." He was an insistent advocate of local government in which every citizen could participate, and a strong support of "the state governments in all their rights, as the most competent administrations for our domestic concerns." In all government he deemed simplicity and economy of prime importance. As President he was concerned to reduce the general government to "a very simple organization and a very inexpensive one—a few plain duties to be performed by a few servants."

Yet the democracy which Jefferson contemplated as an ideal was imperfectly realized in his own time. The suffrage was far from universal; the direct and personal participation of all citizens in politics was not expected; politics was very much an affair of the governing class. Moreover, Jefferson was by no means so doctrinaire as he is often represented. He seems to have doubted the practicability of democratic government except among an agricultural people. He inveighed against the encouragement of manufacturing and industry; for factories built up cities and urban life corrupted morals. He did not hold that democratic government was best at all times and places, for as he said à propos of the territory of Orleans, "the habits of the governed determine in a great degree what is practicable."

See Democratic-Republican Party; Political Theories of American Publicists, Early.

References: H. Adams, *Hist. of the U. S.* (1890), I, chs. vii–ix; C. E. Merriam, *Hist. of Am. Pol. Theories* (1903), ch. iv.

Allen Johnson.

JEFFERSONIAN SIMPLICITY. An expression denoting the dislike and disregard for display, pomp and ceremony, both social and official, which characterized Jefferson (*see*) during his presidency and which, from that day to this, has been used to denote principles of democratic equality and simplicity. See Democratic-Republican Party; Jefferson, Thomas.

O. C. H.

JEOPARDY. The clause found in the Fifth Amendment of the Federal Constitution relating to procedure in criminal cases, that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb," is merely a partial statement of a common law principle that no one shall be twice tried for the same offense; and while that clause is practically applicable only to crimes punishable by death, the provisions in state constitutions are usually broader in scope so as to cover all cases of criminal punishment.

The rule of procedure which is generally recognized irrespective of specific constitutional provisions is, that when the accused has been put on trial under a valid indictment in a court having jurisdiction of the case and a jury has been impanelled and sworn to try the case and give a verdict, jeopardy attaches and he can not be again put on trial for the same crime or any included crime of which he might have been convicted in that prosecution, unless the jury has been discharged by the court without a verdict being rendered on account of some fault of the defendant, or by reason of some fact which renders it reasonably impractical for the trial to proceed, not due to the fault of the prosecution, such as sickness of the judge or juror, or inability of the jury to agree.

A verdict of not guilty is conclusive and the defendant must be discharged. The defendant may, however, appeal from a conviction, and if there is a reversal on account of errors committed on the trial or the insufficiency of the evidence, he may be required to submit to a new trial, his appeal being regarded as a waiver of former jeopardy. But it is not necessary that there be either a legal conviction or a legal acquittal to constitute former jeopardy. The principle is broader than that involved in a prior adjudication, for a proceeding in a civil case is conclusive on the rights of the parties only after judgment has been finally rendered, while jeopardy is complete when the court proceeds with a jury to ascertain the defendant's guilt.

As the criminal jurisdiction of the federal court extends only to offenses committed against the United States and no prosecution for such offenses can be entertained in the state courts, it follows that there can be no question of former jeopardy as between a federal court and a state court.

Emlin McClain.

JEWISH QUESTIONS IN DIPLOMACY. The Jews are notable in the history of the world for preserving their race, religion and identity, though distributed among many nations. Throughout the middle ages their civil

status was that of inferiors before the law, and they were subject to many restrictions, such as the obligation to live in a ghetto.

In almost all western countries the Jews have now precisely the same status, rights, and opportunity for citizenship as members of other religious confessions. In some eastern countries and in Russia, however, they are subjected by law to restrictions as to residence, property holding, calling, education, etc. The discriminations against Jews within the countries of their adoption have attracted the attention of the civilized world, and have led to several protests from the American Government or parts of it. In December, 1904, President Roosevelt, in his annual message, commented on the massacres of the Jews in Kisheneff and other Russian cities. July 17, 1902, Secretary Hay sent a circular despatch to our ministers in Europe, protesting against the discriminations against Jews in Roumania. These can hardly be considered acts of state policy or in any way binding on the people of the United States (*see* INTERVENTION).

Many Jews have emigrated from Russia and some of the Balkan states to America and have there been naturalized and acquired citizenship. The Russian government requires the consent of the administrative authorities before a person can emigrate; and when Jews return from America they are subject to arrest and punishment for leaving without permission, and the government will not recognize their citizenship in the United States.

However unfriendly this may be, the nations are not yet committed to the doctrine that an individual has the right to change his allegiance at his will; and the United States does not, either in Russia or in other countries, insist that naturalization in the United States relieves a person from obligations which rested upon him when he left his native country, unless there is a formal treaty to that effect. Nor can the United States deny the right of Russia to expel or refuse to admit American citizens who were born as Russian citizens.

The principle of refusing to admit Jews of Russian birth is, however, extended by the Russian government to members of the Jewish race, born in the United States and in no wise connected with Russian citizenship. The passports of such persons the Russian government has steadfastly refused to acknowledge, and they have commonly been expelled from the country if they set foot in it.

Resentment has long been felt in the United States against this practice of treating Jews from the United States on a different footing from other persons: the public has made little effort to distinguish between native Russians not naturalized in the United States and subject in all respects to Russian laws on their return; naturalized citizens of Russian birth; and American citizens who have never owed allegiance to Russia. Under a treaty of 1832 the inhabitants of each country were to be "permitted to sojourn and reside in all parts of said territory." December 17, 1911, somewhat hurried by a resolution of the House of Representatives, President Taft gave the requisite year's notice that the treaty of 1832 should be abrogated. On its expiration the two countries were left without any commercial agreement.

During the negotiations for peace among the Balkan States in Bucharest in 1913 the State Department sent a request that in the treaty an article be inserted providing for the enjoyment of civil right by the people of all religions. No action was taken by the conference.

See ALIEN; CITIZENSHIP IN THE UNITED STATES; DECLARATION OF INTENTION TO BE NATURALIZED; DOMICILE AND RESIDENCE; RELIGIOUS LIBERTY.

References: *Am. Year Book, 1911*, 67, 98, 750; Jewish Hist. Soc., *Publications*, No. 15 (1911). ALBERT BUSHNELL HART.

JINGOES. Those who advocate a warlike policy in dealing with foreign powers and glory in their country's preparedness for war. The term is of British origin, appearing in a song in 1874:

"We don't want to fight,
But by jingo, if we do,
We've got the ships, we've got the men,
We've got the money too,"

and first applied to the supporters of Lord Beaconsfield's policy of sending the British fleet to resist Russian advance in 1878.

O. C. H.

JOHNNY REB. A nickname bestowed during the Civil War, upon the Confederate soldiers by the soldiers of the Federal army.

O. C. H.

JOHNSON, ANDREW. Andrew Johnson (1808–1875), seventeenth President of the United States, was born at Raleigh, N. C., December 29, 1808. In 1826 he removed to Tennessee, and from 1835 to 1839 was a member of the state house of representatives, and in 1841 of the senate. In 1843 he was elected to Congress as a Democrat, retaining his seat for ten years, and giving his support to the annexation of Texas and the Compromise of 1850. From 1852 to 1857 he was governor of Tennessee, and was then elected United States Senator. His pronounced Union views, notwithstanding his Democratic state-rights principles in general, had already alienated him from the slave-holding element in Tennessee; and in 1861 he vigorously denounced secession and its leaders. In March, 1862, he was appointed military governor of Tennessee, where he displayed energy and ability in the defence of the state and the reorganization of its government. In June, 1864, he was nominated for

the vice-presidency by the Republicans, as a concession to the Union element of the South; and succeeded to the presidency on the assassination of Lincoln, April 15, 1865. His struggle with Congress over reconstruction is part of the history of the United States from 1865 to 1869. Articles of impeachment were adopted by the House March 2–3, 1868, but the trial, which lasted until May, resulted in acquittal. In 1875 he was elected United States Senator, and served during the extra session of that year, but died July 30, near Carter's Station, Tenn. See IMPEACHMENT; RECONSTRUCTION. References: D. M. DeWitt, *Impeachment and Trial of Andrew Johnson* (1903); W. A. Dunning, *Reconstruction* (1907); F. Bancroft, *William H. Seward* (1900); Gideon Welles, *Diary* (1911), II, III. W. MacD.

JOHNSON MEN. See CONSERVATIVES.

JOINT RESOLUTION. A joint resolution is a form of subsidiary legislation frequently employed in this country for administrative purposes or for expressing the legislative will upon matters of a temporary, local or private character. But the constitutions of many states prohibit the enactment of laws except by bill, and where such restrictions exist the joint resolution may not be employed for purposes of general legislation. In practically all the states, however, it is used for such purposes as the appointment of commissions, making small appropriations, the administration of state property, making provision for exhibitions and commemorative observances, memorializing Congress to pass certain bills, expressing the thanks of the legislature, declaring the policy of the state, and for dealing with many other incidental matters. According to the practices of Congress and most of the state legislatures, joint resolutions take the same course of procedure as is observed in the passage of bills, and are submitted to the executive for his approval or disapproval. In a few, however, this rule is not followed and they may be passed and put into force without reference to a committee, without the customary three readings and without the approval of the executive. The enacting clause of a joint resolution usually reads: "Be it Resolved by the Legislature (or General Assembly)," etc. The rules of Congress and of many of the state legislatures make a distinction between joint and concurrent resolutions, the latter being employed to express the sense of the legislature upon matters which concern it alone, and hence they are not submitted to the executive for his approval. Such are resolutions fixing a time for adjournment, the adoption of joint rules, the printing of documents, and other matters affecting the internal order, procedure or business of the legislature. See CONCURRENT RESOLUTION; RESOLUTIONS IN CONGRESS. References: A. C. Hinds, *Precedents of the House of Rep.* (1889), § 453; P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1903), 134–136; C. L. Jones, *Statute Law Making* (1912), ch. xiii. J. W. G.

JOURNALS OF LEGISLATIVE BODIES. The journal of a legislative body is a chronological record of its daily proceedings. So great is the importance of keeping and preserving such a record that the Constitution of the United States (Art. I, Sec. v, ¶ 3) and the constitutions of all the states except that of Massachusetts require each house to keep a journal and to publish the same. In Vermont publication is required when one-third of the members demand it, and in Connecticut when one-fifth so demand. In the other states no limitations or conditions are specified. In some, publication is required to made "from time to time," in some as soon as convenient after the close of the session, and in some weekly. In a considerable number of states, publication is not required of such parts of the journal as may, in the judgment of the house, require secrecy.

The Constitution of the United States and those of many states require that the yeas and nays on any question shall, upon the demand of a certain number of members, usually one-fifth, be entered upon the journal. Votes on measures passed over the executive veto are also usually required to be so entered. In a few state constitutions it is also provided that any member may dissent from or protest against any act or proceeding which he may deem injurious to the public and have his reasons therefor entered on the journal. At the beginning of each day's session, it is customary for the clerk to read the journal of the proceedings of the previous day, at which time it is corrected and approved. A rule of the United States Senate provides that the journal shall be read "to the end that any mistake may be corrected." The rules of the House of Representatives provide that the Speaker shall cause the journal to be read, "having previously examined and approved the same." In case errors have been found, he directs that the same be corrected and the proper entry made. It is a commonly recognized right of a legislative body to direct that an entry in the journal be expunged, that is, erased or obliterated. This is usually done by actual erasure of the objectionable passages, but in a notable instance in the United States Senate it was done by drawing black lines around the same and writing the words "expunged" across it. Concerning the right of the courts to go behind an authenticated act of the legislature and examine the journal to ascertain whether the constitutional requirements have been complied with in passing the act there is a wide difference of opinion but the trend of judicial decision is rather against the claim, the theory being that the formal

attestation of the presiding officers is better evidence than the record kept by the clerk, a subordinate employee of the legislature.

See EXPUNGING RESOLUTION; JACKSON, ANDREW, CENSURE OF.

References: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 193–195; A. C. Hinds, *Digest of Rules and Practices* (1908), 520–522; P. S. Reinsch, *Am. State Legislatures and Legis. Methods* (1907), 142–147.

JAMES W. GARNER.

JUDGE ADVOCATE GENERAL. This title belongs to both services and therefore requires separate treatment for the Army and Navy.

Army.—The department of which this officer is the head includes eleven officers holding rank above captain as a permanent staff; and as many acting judge advocates as there are military divisions, who rank as captains while on this detail. The proceedings of all courts-martial, courts of inquiry, and military commissions are revised and recorded in the office of the judge advocate general in Washington. While an officer holding this title served in the Army during each of the wars in which it was engaged, it was not until July 17, 1862, that his duties were defined by law and he was given the permanent rank of a brigadier-general.

Navy.—Congress provided, June 8, 1880, that this place should be filled by an officer of the Navy or Marine Corps, appointed by the President and holding while in office the rank and title of captain or colonel, according to the branch of the service to which he belonged. His duties in regard to the proceedings of courts-martial are similar to those of the judge advocate general of the Army, and he is also charged with the interpretation of regulations and the supervision of naval prisons. No permanent corps of judge advocates is provided for the Navy; but a solicitor is appointed to report upon questions of law.

See COURT OF INQUIRY; COURTS MARTIAL; MARTIAL LAW; MILITARY LAW.

References: U. S. War Department, *Annual Reports*, 1912, I, 489–503; *Military Laws of the U. S.* (1908), ch. xvii; U. S. Navy Department, *Navy Regulation* (1909), 16, 21, 423, *Annual Reports*, 1912, 99–110.

C. G. CALKINS.

JUDGE MADE LAW. The law established by judicial precedents, the decisions of courts. The phrase is sometimes used to indicate such decisions of the courts as distort or add to the true meaning or intent of statutes, or unduly restrict or enlarge their application. Reference: J. C. Gray, *Nature and Sources of the Law* (1909), 513, 550. H. M. B.

JUDGES, FEDERAL. Appointments.—The judges of the Supreme Court and of such inferior courts as Congress may establish under the judiciary article of the Constitution are appointed on nomination by the President by and with the advice and consent of the Senate (Art. II, Sec. ii, ¶ 2), and hold their offices during good behavior, receiving for their services a compensation payable at stated times, which compensation may be increased but cannot be diminished during their continuance in office (Art. III, Sec. i). No qualifications are prescribed save that the judges of the district courts must be residents of the districts from which they are appointed; but the appointments have always been made by selection from those qualified to practice at the bar. The constitutional provisions as to tenure are not applicable to judges of other courts than those provided for in the judiciary article, such as judges of territorial courts; but the provision for life appointment has usually been made in establishing other federal courts, such as the court of claims.

Removals.—Judges of the federal courts provided for in the judiciary article can only be removed from office by conviction on impeachment (Art. I, Sec. ii, ¶ 5, Sec. iii, ¶ 6, Art. II. Sec. iv). Six federal judges have been impeached, the last in 1912, and of these, three were convicted. Proposals were made in the constitutional convention and renewed in Congress at an early day by way of securing amendment to the Constitution, for removal of judges on address to the President by the Senate and House of Representatives. But the proceeding by impeachment was considered preferable and has been retained (*see* IMPEACHMENT). Judges of inferior courts may, however, in effect be removed by legislation discontinuing the existence of such courts, as was done when the newly created circuit courts were abolished in 1802 (*see* COURTS, FEDERAL).

Character of Federal Judges.—The purpose of the framers of the Constitution to secure a judiciary of high character and ability, unapproachable by corrupting influences and free from partisanship, has been successfully accomplished. Life tenure and security of compensation have removed the federal bench as far as possible from temptation to entertain any other considerations in the decision of cases than those which prompt them to a faithful and impartial administration of the law. The infrequency of appointments renders it practically impossible for the executive to control the decisions of the courts on any particular question; and while they have the peculiar prerogative of declaring statutes to be unconstitutional (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION), which involves the exercise of an important function in interpretation and application of the Constitution and statutes, this prerogative has not been exercised on partisan considerations. It has been charged that in one instance appointments to vacancies were made for the purpose of changing the conclusions of the court in a pending case (*see* LEGAL

TENDER CONTROVERSY); but this charge has been successfully controverted by those who were in a situation to speak of the motives which influenced the President in making such appointments. But one impeachment has been predicated upon personal corruption and the other two convictions on impeachment were on grounds respectively of treason and mental incapacity. The legal ability, personal fitness, and judicial impartiality of the members of the federal judiciary as a whole have entitled their decisions to respect and secured for the federal courts the general confidence of the people.

See COURTS, FEDERAL; COURTS, FEDERAL, JURISDICTION OF; EXECUTIVE AND JUDICIARY; JUDICIARY AND CONGRESS; JUDICIARY AND JUDICIAL REFORM.

References: W. W. Willoughby, *Constitutional Law* (1910), II, 970–973; J. R. Tucker, *Constitution of the U. S.* (1899), I, 391; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, chs. xxii–xxiv, II. ch. cii; H. L. Carson, *Hist. of the Supreme Court of the U. S.* (1905).

EMLIN MCCLAIN.

JUDGES OF ELECTIONS. Judges of elections used to be appointed by voters present when the polls were opened, but in many states are now designated by state supervisors of elections, by county judges or by official party committees. There are usually four judges and two clerks in each precinct, not more than two of the judges and one of the clerks to be of the same political party. The presiding judge will usually be of the political party in control of the state. If a vacancy occurs the voters present at an election, may fill it. These election officers have charge of all elections occurring within the year. Often the election judges are small political henchmen. In a few states, there are movements for reform in the selection of election judges. See BALLOT; ELECTION SYSTEM. **Reference:** Election laws of the different states.

T. N. H.

JUDGES, STATE. See STATE JUDICIARY.

JUDGMENTS, INTERSTATE RECOGNITION OF. By force of the first section of Article IV of the Federal Constitution, and of statutes of Congress passed in pursuance thereof, judgments obtained in the courts of one state must be given full faith and credit in the courts of every other state of the Union. By this is not meant that these judgments shall become immediately operative and enforcible outside of the jurisdictions within which they are originally rendered, but that when set up and authenticated in other states by the parties beneficially affected by them, their correctness shall not be denied, and that the appropriate writs for their enforcement, as far as the courts, in which their enforcement is asked, have jurisdiction of the parties or of the properties concerned, shall be issued. When, then, an authenticated foreign judgment of another state of the Union is made the basis of a suit the only defense that may be made is that known as *nul tiel record*, under which the jurisdiction of the court which originally rendered the judgment may be questioned. And of course, the jurisdiction of the court where enforcement is sought may be denied.

It is a general principle of law that a court may act only in cases where it has obtained jurisdiction of the parties thereto. This is obtained over the defendant by serving upon him notice of the bringing of the suit. Where actual personal service of the defendant is not possible, constructive service by publication or by mail is permitted, but only if the suit is to affect property within the territorial jurisdiction of the court. Hence it follows that judgments obtained in one state against a defendant, with specific reference to certain of his property located within the state, cannot furnish a basis for a suit in another state. Such a judgment is described as *in rem*. If, however, the suit be one which warrants a judgment *in personam*, that is, directly against the defendant, charging him with a certain liability, actual service upon him must be had; and, where judgment against him is obtained, it may be enforced wherever he may be found, and, if it be a pecuniary one, by proceedings *in rem* against property which he may have, wherever situated, in which latter case constructive service upon him of the bringing of the suit upon the judgment will suffice.

There is no constitutional obligation upon one state to enforce in any way the criminal judgments of other states.

See FAITH AND CREDIT; INTERNATIONAL LAW, PRIVATE; INTERSTATE LAW AND RELATIONS.

References: F. Wharton, *Conflict of Laws* (3d ed., 1905); D. K. Watson, *Constitution of the U. S.* (1910); W. W. Willoughby, *Constitutional Law of the U. S.* (1910); D. Rorer, *Am. Interstate Law* (2d ed., 1893), 123–157.

W. W. WILLOUGHBY.

JUDICIAL POWER, THEORY OF. Definition.—The judicial power has been defined as the authority vested in the courts and judges, as distinguished from the executive and legislative power (Gilbert *vs.* Priest, 65 *Barb. N. Y.* 448). The legislative function consists mainly in prescribing rights and duties and in laying down rules of action; it is the principal function of the executive to see that legislative commands are enforced, while the judiciary interprets their meaning and applies them in particular cases in which rights are in controversy. Some writers, however, maintain that in reality there are but two classes of governmental powers: those which have to do with the formation and expression of the will of the state, and those which are concerned with the

execution of that will. Thus says DuCrocq (*Traitê de Droit Administratif*, I, 29): "The mind can conceive of but two powers; that which makes the laws and that which executes." Those who adopt this view treat the judicial power as a particular phase or manifestation of the executive power, since it is in reality concerned with the application and enforcement of the legislative will.

Separation of Powers.—In practice, however, all governments are organized on the principle that the judicial power is not a part of the executive function, but that it is fundamentally different in character and should be exercised, for the most part, by separate and distinct organs. Nevertheless, it has been found impossible in practice to draw an exact line of demarcation between legislative, executive and judicial functions, and it is safe to say that there is no government in which all powers of a judicial character are exercised exclusively by the courts and none in which the courts are restricted to the exercise of purely judicial functions (*see* SEPARATION OF POWERS).

Courts make rules of practice, appoint officers, grant licenses, order elections, assign judges to their courts, approve acts of administrative authorities and perform various other functions of a legislative or administrative character. What the judicial power embraces in a particular state must, therefore, be ascertained from an examination of the constitution and the decisions of the courts of that state. Under the Constitution of the United States (Art. III, Sec. ii, ¶ 1), the functions of the federal courts are almost exclusively judicial in character. They cannot be required to give the executive advice, to render extra-judicial opinions in cases not properly brought before them, or to act as commissioners in the determination of pension claims or similar proceedings. Some of the state constitutions distribute the executive, legislative and judicial powers among the three departments without absolutely prohibiting any one from exercising power properly belonging to either of the others, thus leaving the relations to be determined mainly by the decisions of the courts. Under such a provision, the legislature of Connecticut for a long time occasionally gave equitable relief to carry out the provisions of wills in respect to charitable bequests, interfered repeatedly in probate proceedings, set aside judgments and released sureties in judicial recognizances (Baldwin, *The American Judiciary*, 20). Where, however, the distributing clause of the constitution forbids the exercise by one department of powers properly belonging to another and the provision is not qualified by a subsequent provision, legislative or administrative functions cannot be devolved upon the courts by statute. The judicial function is retrospective in character while that of the legislature looks to the future. The legislature makes the laws but cannot pass judgments or issue decrees under the guise of legislation.

Historically the judicial power is the oldest of the three. In rude form it was exercised among the ancients when custom was the only law recognized.

Hamilton prophesied that the judiciary in the United States would prove the weakest of the three departments and the least dangerous to the others. Unlike the executive, which dispenses the honors and holds the sword of the community, and unlike the legislature, which not only commands the purse but prescribes the rules by which the rights and duties of every citizen are to be regulated, the judiciary, he said, has no influence over either the sword or purse, and no direction either of the strength or of the wealth of society; in short, it has neither force nor will but only judgment and must naturally depend upon the executive arm for the enforcement of its judgments (*Federalist* No. 78). Through its power to judge of the constitutionality of the acts of the legislature, however, it has in some respects proved the strongest of the three departments and its power has been still further increased by the practice of the legislature of making it the dépository of many quasi-executive and legislative functions (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION).

Judicial Control over the Administration.—In the United States an important domain of the judicial power consists in the control exercised by the courts over the administration through the issue of writs. In the case of the President of the United States they have declined, however, to issue processes against him or in any way to control his action except in so far as they may do so by refusing to give the sanction of law to his acts or orders when they are without legal warrant. But over his subordinates the courts exercise frequent control and the orders of the President cannot be pleaded by his subordinates in defense of acts done by them in violation of the laws. In some of the states the supreme court has claimed and exercised the power of issuing writs against the governor to compel him to perform a purely ministerial duty but the preponderance of practice is against the claim.

Extent of the Judicial Power.—In all countries the judicial power includes the right to determine what the law is when its meaning is drawn in question. In the exercise of this power, the judges endeavor to give effect to the presumable intention of the law maker, as well as to discover the hidden meaning of the law. This is not "making the law," but "finding it." They think over again the thought which the legislature was trying to express, as Windschied has remarked. The Roman jurists went even further and undertook to "think out the thought which the legislator was trying to think," that is, what he would have enacted had he known what future conditions

would be [Monroe Smith, "Judge-made Constitutional Law," in *Van Norden's Magazine*, II (1907), 25]. Through the process of interpretation and construction, through the extension of old principles to new conditions and circumstances, and through the adoption of new principles to meet new requirements, the courts have in many countries developed or created whole branches of "judge-made" law. In this way, the Roman jurists developed an immense body of private law from the meager fabric of the Twelve Tables, and similarly, in England and America, the judges have built up a large body of the law. Almost the whole body of jurisprudence embraced under the head of "Conflict of Laws," (*see* INTERNATIONAL LAW, PRIVATE), for example, is the work of the courts. Where constitutions and laws are rigid, flexibility must be supplied by the minds of the judges if the legal system is to grow and expand to meet the changing necessities of society.

See COURTS, FEDERAL, JURISDICTION OF; EXECUTIVE AND JUDICIARY; JUDICIARY AND CONGRESS; LAW, ADMINISTRATIVE; LAW, CONSTITUTIONAL; POLITICAL QUESTIONS.

References: S. E. Baldwin, *The Am. Judiciary* (1905), ch. ii; J. Bryce, *Studies in Hist. and Jurisprudence* (1901), 197; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), ch. vii; A. V. Dicey, *Law and Public Opinion in England* (1905), § 10; A. Esmein, *Droit Constitutionnel* (4th ed., 1910), Pt. I, Title II, ch. iii, § 3; F. J. Gooonow, *Principles of the Administrative Law of the U. S.* (1905), 378–381, 418–440; H. Sidgwick, *Elements of Politics* (1897), ch. xxiv; A. St. Girons, *La Séparation des Pouvoirs* (1881), Bk. I, ch. i; W. H. Taft, *Present Day Problems* (1908), 290–332.

JAMES W. GARNER.

JUDICIAL SYSTEM IN EUROPE. Of all branches of European public law this subject has received the scantiest attention from English and American writers, due to the fact that in most continental countries the judiciary has no constitutional basis but rests on mere statutory enactment, as also to its connection with a legal system differing widely from the English common law. European courts are arranged in hierarchies through which appeals may be carried; they are collegial in organization and are often divided into chambers or senates among which cases are distributed, sessions *in plenum* being occasionally necessary to avoid conflicting decisions. The higher courts are often very large, the German *Reichsgericht* consisting of ninety-eight, the French court of cassation of forty-nine justices. The highest courts of appeal in Latin countries are courts of cassation rather than true courts of last resort, their function being merely to pass on alleged errors in law in the decisions of lower courts, to quash when necessary the judgments of these inferior tribunals, and to order new trials. They never themselves render a final decision in a case. Judges are elected only in exceptional cases in Europe; the ordinary courts are almost universally filled by appointive magistrates. (In France courts of commerce and of arbitration in labor disputes are chosen by appropriate electorates.) The tenure of judges is almost always for life or good behavior, Switzerland being the only European country which limits the term of the judges of its highest court. The independence of the judiciary is generally further secured by vesting in the courts themselves the disciplinary authority, with power of removal after a regular trial upon conviction of offences defined by law. In some countries, however, and especially in Italy, judicial independence is seriously invaded by the executive, through the practice of transferring judges from more to less desirable posts.

The most striking feature of the judicial systems of continental countries is the special class of administrative tribunals, completely separate and distinct from the ordinary courts, which determine all controversies of an administrative character, cases between private individuals and public officials, as well as disputes between administrative authorities themselves. The courts of continental countries are not only deprived of that control over the executive which they enjoy in England and America, but they also lack the special prerogative, which in Anglo-Saxon countries with written constitutions is generally attributed to the judiciary, of declaring legislative enactments null because in violation of superior constitutional prescriptions. Generally speaking courts may not exercise their right of interpretation in such a way as to invalidate a statute. There are a few exceptions. The German *Reichsgericht* has declared the legislative acts of the member-states void when conflicting with the imperial constitution or laws, but it has never extended this power over imperial statutes which may have been repugnant to the imperial constitution. In three of the Swiss cantons the courts are given the power to set aside cantonal legislative acts on grounds of unconstitutionality, but the Swiss federal constitution requires the federal tribunal to enforce all acts passed by the federal legislature. This legislative freedom from judicial restraint reduces the constitutional limitations upon the law-making power to mere "maxims of political morality, which derive whatever strength they possess from being formally inscribed in the constitution and from the resulting support of public opinion." The courts are not the ultimate interpreters of the constitution, and in consequence their decisions do not embody so important a source of constitutional law as is the case in the United States.

The participation of a lay element (jury or assessors) in a trial is a principle not inherent

in continental systems of jurisprudence. It has been introduced in a very limited degree in most of the countries of western Europe, but is still something of an exotic growth whose future cannot be predicted with confidence. The use of the jury is everywhere confined to criminal cases, and even here it is not so universally used, nor does it play so important a part in the trial as in common-law countries. Criminal trials have a far more inquisitorial character than with us, the safe-guards which we deem essential not being observed in anything like the same degree. Ordinarily a mere majority of the jury is competent to render a decision.

See COURTS AND TRIBUNALS, ADMINISTRATIVE; LAW, ADMINISTRATIVE.

References: J. W. Garner, *Introduction to Pol. Sci.* (1910), ch. xvii, "German Judiciary" in *Pol. Sci. Quart.*, XVII (1902), 490–514, XVIII (1903), 512–530; J. B. Simonet, *Droit Public* (4th ed., 1902), 110–173; A. Esmein, *Éléments de Droit Constitutionnel* (4th ed., 1906), 400–439; B. E. Howard, *The German Empire* (1906), ch. ix, "Trial by Jury in Germany" in *Pol. Sci. Quart.*, XIX (1904), 650–672; J. K. Bluntschli, *Allgemeines Staatsrecht* (6th ed., 1885), Bk. V; O. G. Villard, "The German Court" in Am. Hist. Assoc., *Annual Reports* (1895), 489.

WALTER JAMES SHEPARD.

JUDICIAL SYSTEM OF GREAT BRITAIN. The judicial system of Great Britain ranges from the court of the justice of the peace, in which a single magistrate can administer summary justice, to the High Court of Justice, the House of Lords sitting as a court of appeal, and the judicial committee of the Privy Council—the court of appeal for cases arising in India and the oversea dominions. The local courts for the summary administration of criminal justice are constituted of magistrates sitting in petty sessions. In the larger towns the jurisdiction of the courts is limited to cases arising within the borough. Rural England is mapped out into 750 petty sessional divisions. In these divisions the magistrates assemble once or twice a month in petty sessions for the administration of summary justice or as courts of first instance for more serious cases which are remitted either to quarter sessions or to the assizes. The county magistrates are appointed by the Lord Chancellor on the recommendation of the Lord Lieutenant of the county aided, since 1911, by an advisory committee. In London and the larger cities many of the cases which in smaller communities are dealt with by magistrates in petty session go before stipendiaries who hold court daily.

Cases in which the magistrates in petty session can act only as a court of first instance go, according to seriousness, either to quarter sessions, or to the assizes which are held in every county four times a year, and at which the judges are of the high court. A recorder's court exists in many of the cities. The recorder is appointed by the Home Office. Juries are part of a recorder's court; and in these courts as at quarter sessions and assizes, only barristers, taking briefs from solicitors, have the right to audience. Only criminal cases come before recorders' courts. Cases not dealt with in recorders' courts and not of sufficient importance to go to assizes go to quarter sessions. Quarter sessions are constituted of magistrates who are of the petty sessional divisions of the hundred for which the court is constituted. Grand and petit juries serve at quarter sessions. Except as regards licensing appeals, and cases arising out of the closing of highways, only criminal cases are tried in quarter sessions. The court is one of high jurisdiction. It can try all crimes except capital offences, crimes for which a person not previously convicted may suffer penal servitude for life, and some of the more serious misdemeanors—perjury, forgery, bribery, and libel. These graver cases go to the assizes where both criminal and civil cases are taken. Civil business at the assizes is of much the same character as in the court of King's Bench in London. For less important civil cases there are the county courts. Judges of these courts travel from town to town, sit with juries when necessary, and have jurisdiction over a wide range of cases, including cases under the employers and workmen and workmen's compensation acts. Stipendiaries administer summary justice in the metropolis and act as courts of first instance in the more serious cases which go to the Middlesex or Surrey sessions—answering to quarter sesions—or to the central criminal court. There judges of the high court hold a session once a month, and the recorder of the City of London also presides at one of the central criminal courts. Judges at assizes, chairmen at quarter sessions and recorders can, in criminal cases after conviction, reserve a question of law but not of fact for the court of Crown cases reserved; but there was no appeal against conviction on indictment until 1908 when the Criminal Appeal Act came into operation.

The high court in London consists of three divisions: Court of Chancery, over which the Lord Chief Justice presides; King's Bench; and Probate, Admiralty and Divorce. The judges of all these divisions, save the Lord Chancellor, are appointed by letters patent under the Great Seal on the advice of the Lord Chancellor. They hold office during good behavior, but may be dismissed on address by both Houses of Parliament. Cases may go from the high court to the court of appeal and thence to the House of Lords. Indian and colonial appeals go to the judicial committee of the Privy Council, which also hears appeals on the cases arising in England out of the Church Discipline Acts.

See JUDICIAL POWER, THEORY OF; JUDICIAL SYSTEM IN EUROPE.

References: W. R. Anson, *Law and Custom of the Constitution* (4th ed., 1909), II, Pt. 2, ch. x; F. W. Maitland, *Justice and Police* (1885), chs. viii, ix.

EDWARD PORRITT.

JUDICIARY ACTS. The acts of Congress providing for federal courts inferior to the Supreme Court and regulating the procedure of the federal courts are usually spoken of as the Judiciary Acts. The first and most important was passed in 1789. See COURTS, FEDERAL.

E. McC.

JUDICIARY AND CONGRESS

Power over Organization.—The powers of Congress in respect to the federal judiciary may be grouped under four heads: (1) power over its organization; (2) power in respect to jurisdiction; (3) power to regulate procedure; and (4) power to remove the judges by impeachment proceedings.

The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish (Art. III, Sec. i). In a sense, the Supreme Court is thus created by the Constitution while the inferior courts depend for their existence upon the will of Congress. In reality, however, the existence of the Supreme Court is virtually dependent upon Congress, quite as much as that of the inferior courts, since Congress must provide for the number of judges and other officers essential to the existence of the court, as well as appropriate money for the salaries of the justices. Even when the court has once been created and the salaries fixed, its existence is not fully secure against the action of Congress, notwithstanding the constitutional provision fixing the tenure of the judges at good behavior and forbidding the reduction of their compensation, since Congress might at any time enact that when a vacancy occurs on the bench the particular judgeship should be abolished and in this way it might gradually disestablish the Court.

The judiciary act of 1789 provided for the organization of the federal judiciary by creating a Supreme Court to be held by a chief justice and five associates, three circuit courts and thirteen district courts, though no regular circuit judges were provided for (*see* COURTS, FEDERAL).

By a strict party vote in 1801, during the last days of the administration of John Adams, Congress provided for sixteen circuit judges, and President Adams immediately made the necessary appointments to the judgeships thus created, before retiring from office. The act itself, as well as the circumstances under which the appointments were made, was the subject of strong criticism by members of the incoming Republican Congress and a bill to repeal the act was immediately introduced and passed, and thus the new judges were legislated out of office. There were doubts as to the constitutionality of the repealing act but the question was never tested before the Supreme Court.

With the increase of litigation in the Supreme Court it became practically impossible for the justices of that court to do any considerable amount of circuit court work, and so, in 1869, Congress provided for the appointment of nine circuit court judges, one for each circuit, each justice of the Supreme Court being required to attend at least one term of the circuit court in the circuit assigned to him, as often as once in two years. In the course of time, the business of the Supreme Court at Washington still further increased so that by 1890 it was several years behind with its docket. To relieve the Court of this congestion and provide a means for expediting appeals from the inferior courts, Congress in 1891 created a court of appeals for each of the nine circuits. The justice of the Supreme Court assigned to each circuit, the circuit judges, and the district judges were empowered to hold the court In the course of time it came about that substantially all the circuit court work was performed by the district judges, yet there was still maintained in each circuit the organization and machinery of a circuit court with the resulting expense and confusion to litigants and attorneys. To remove these rather unsatisfactory conditions and to introduce greater simplicity into the organization of the federal judiciary, Congress by an act approved March 3, 1911, abolished the circuit courts, and conferred their original jurisdiction on the district judges.

Power in Respect to the Jurisdiction of the Federal Courts.—The subjects to which the judicial power of the United States shall extend being prescribed by the Constitution itself (Art. III, Sec. ii), the only power left to Congress, in regard thereto, was to apportion the judicial power thus conferred among the several courts which had been established. Congress cannot, of course, confer original jurisdiction on the Supreme Court in any cases not specifically authorized by the Constitution (*see* Marbury *vs.* Madison), nor can it require any federal court or judge to hear and determine cases which are not judicial in character. Thus it cannot require them to act as commissioners for the adjudication of pension or other claims nor give opinions on questions not

properly brought before the court in the regular course of judicial proceedings.

Power over Judicial Procedure.—The power of Congress to frame rules of procedure for the federal courts is undoubted and the power has, to a limited extent, been exercised. These rules may be found in the several chapters of the judiciary act as codified and revised in 1911. A good example of the kind is found in an act passed in 1911, designed to diminish the evil of reversals for technical errors and otherwise improve the administration of justice in the federal courts. This act provides that no judgment shall be set aside, or reversed or new trial granted by any court of the United States on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or practice, unless in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties. (*See* LEGAL PROCEDURE, PROPOSED REFORM OF). For the most part, however, the federal courts are left to frame their own rules of practice, which cannot be said of the courts of some of the states, where elaborate practice acts have been framed by the legislature.

Power of Congress to Remove the Federal Judges.—The Constitution provides for the removal of federal judges upon impeachment (*see*) proceedings, for the offenses of treason, bribery and other high crimes or misdemeanors (Art. II, Sec. iv). It provides that impeachment charges must be preferred by the House of Representatives and tried by the Senate. There have been six cases of the impeachment of federal judges: Pickering in 1803, Chase in 1806, Peck in 1830, Humphreys in 1862, Swayne in 1909 and Archbold in 1912. Chase was a justice of the Supreme Court, the others were district judges. Pickering, Humphreys and Archbold were convicted and removed from the bench, Chase Peck and Swayne were acquitted.

The federal courts, of course, have no power of control over Congress except in so far as they may declare its acts invalid on the ground of inconsistency with the Constitution (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION). Hamilton declared (*Federalist* No. 78) that the federal judiciary had the least power to "annoy or injure" the other departments and that it would prove the least dangerous to them, since it had no influence over the sword or purse, no direction of the strength or wealth of society, but only judgment.

See COURTS, FEDERAL; COURTS, FEDERAL, JURISDICTION OF; SEPARATION OF POWERS.

References: S. E. Baldwin, *The Am. Judiciary* (1905), ch. ix; J. W. Burgess, *Pol. Sci. and Constitutional Law* (1891), II, 320; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), ch. vi; G. T. Curtis, *Jurisdiction of the U. S. Courts* (1896); C. A. Beard, *Readings in Am. Government and Politics* (1911), ch. xv; P. S. Reinsch, *Readings on Am. Federal Government* (1909), ch. xiv; *Am. Year Book, 1912*, 231–232. JAMES W. GARNER.

JUDICIARY AND JUDICIAL REFORM

Organization of the Judiciary.—The judicial power, unlike the legislative and executive powers, is not vested in an assembly nor in a single person but in a body of magistrates who exercise their authority either singly or as tribunals. In all countries the highest courts, and not infrequently those of an intermediate character, are organized on the collegial principle, that is, they are held by a bench of judges rather than by a single magistrate. Standing at the top of the judicial hierarchy is usually to be found a supreme court whose territorial jurisdiction is coextensive with the geographical area of the state and whose power includes the determination of legal controversies of national concern. Sometimes, though rarely, instead of a single court of final authority, we find several supreme tribunals in the same state with equal and coördinate jurisdiction as is the case in Italy where there are five courts of cassation with distinct areas of territorial jurisdiction.

In countries having the federal system of government, the judicial power is usually divided between two separate and distinct classes of courts; those organized for the exercise of the judicial power in respect to questions of national concern and those of the several component members of the federation organized for the determination of legal controversies of a local character, though this is not the case in Germany where there is a common judicial organization for the whole empire. In the United States, each state has its own separate and distinct judicial system and procedure framed according to its own notions of its local needs and conditions, and were it not for the common law basis which underlies the legal system of the country as a whole, we should have an extraordinary variety of judicial organization and procedure throughout the country.

Mode of Selection of the Judges.—In the United States all federal judges are appointed by the President by and with the advice and consent of the Senate but those of the states are, for the most part elected by the people. The early practice was election by the legislature or appointment by the governor. Election by the legislature has been found objectionable

because the election is often determined by party caucuses and it frequently leads to a parcelling out of the judgeships among the different sections of the state. It has also been criticised as being in conflict with the principle of the separation of powers and with tending to make the judiciary a dependency of the legislature. Originally the most common method of choice, it has been abandoned in all the states except five (Connecticut, Rhode Island, Vermont, South Carolina and Virginia). Appointment by the executive has likewise been criticised because it tends to the selection of political favorites of the governor. In only five states are the judges now appointed by the governor (Delaware, New Jersey, Massachusetts, New Hampshire and Maine). In all the other states, the higher judges are elected by the people.

Choice by the people has been criticised by some on the ground that it tends to the election of judges who are weak and timid and lacking in independence. By making it necessary for judicial candidates to engage in political contests it conduces to the election of politicians rather than jurists, and by making the reëlection of judges depend upon popular approval, it creates a temptation on their part to shape their judicial decisions so as to meet the approval of those who are not always qualified to form impartial judgments upon judicial conduct, especially in the decision of cases involving intricate questions of law. Finally, the method of popular election tends to repel able men from seeking judicial stations—men who, as Chancellor Kent remarked, are likely to have "too much reservedness of manners and severity of morals to secure an election resting on universal suffrage." Notwithstanding the evils inherent in the method of executive appointment, it has commended itself to most political writers and is the method followed in nearly all countries other than the United States. Such a system tends to remove the judicial office from the arena of party politics, minimizes the temptation of the judges to popular subserviency and increases the independence and dignity of the judiciary.

The Judicial Tenure.—In regard to the terms of the judges, as in regard to the mode of election, there is a great variety of opinion and practice in the United States. Most of the early state constitutions established the good behavior term for the higher judges and this tenure was prescribed by the national Constitution for all the federal judges, superior and inferior alike. But with the advance of the democratic movement, short terms were substituted for the good behavior tenure until to-day there are but three states in which the higher judges serve for good behavior (Massachusetts, New Hampshire and Rhode Island). The terms of the higher judges in the remaining states now range from two years, which is the tenure in Vermont to 21 years in Pennsylvania, the average being about six years. Outside the United States, the good behavior tenure is universal except in Mexico and Switzerland where judges are chosen for six years. The good behavior tenure like the method of executive appointment, has much to commend it and it has received the approval of the majority of political writers and publicists. Hamilton declared it to be "certainly one of the most valuable of the modern improvements in the practice of government" and the "best expedient which can be devised to secure a steady, upright and impartial administration of the laws."

Position of the American Judiciary.—The power which the American courts have assumed of declaring statutes null and void when they are found to conflict with the Constitution—a power which, from the beginning, has been acquiesced in almost without question—has increased immensely the importance of the judiciary and given it a political influence which the courts of no other country enjoy (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION). Through their power to interpret the unwritten law, they build up and develop large bodies of "judge made law" thus supplementing the work of the legislature.

More than either of the other departments of government, the judiciary, and especially the federal judiciary, has commanded popular confidence and respect. The federal courts, partly because of the permanency of tenure of the judges, and partly because of the greater importance of their jurisdiction—both of which facts serve to attract to the federal bench legal talent and distinction—have generally stood higher than the state courts in the public estimation.

Proposed Reforms in Judicial Organization and Procedure.—Recently there has been much discussion of how the efficiency of the courts and especially of the state courts may be increased. Wide spread complaints have been made not only by laymen but by members of the bar themselves, that the processes of the courts are unnecessarily slow and cumbersome, and that miscarriages of justice are all too frequent. As compared with the efficiency of the English courts, which dispose of their cases with unusual dispatch, and which administer justice without regard to harmless errors or technicalities, the courts of most of the American states are at a great disadvantage. In the first place it is claimed that the organization of the American judiciary is not such as to secure the greatest efficiency. There is no provision, as in England, for the grouping or assignment of judges to courts where they are most needed or for the trial of cases for which they are best fitted. In the second place there is a great loss of time in American courts resulting from the practice of requiring the judges to perform a vast amount of clerical and routine work which in England is done

by assistants. In the third place, the courts in the United States are practically headless. The chief justice is merely a presiding officer with no power of administrative control over the business of the court such as the chief judge of an English court possesses. (An interesting discussion of this matter will be found in an article by Kales, "Comparative Study of the English and Cook County, Illinois, Judicial Establishments," *Illinois Law Review*, IV, 303–326.) It has also been widely contended, especially by the bench and bar, that the American judge should be vested with larger power in the conduct of the trial, such as the English judges now possess.

The participation of the American judge in the trial is little more than that of a moderator. His rulings upon questions concerning the admission of evidence are subject to review by the higher courts; he cannot, in criminal cases, comment on the weight of testimony or sum up the evidence for the enlightenment of the jury; and in some states he is not even the judge of the law applicable to the case, that important function being reserved for the jury. The system by which the judges are elected in most of our states, the lack of a permanent tenure and the comparatively small compensation allowed are additional reasons advanced for the inefficiency of the American courts as compared with those of England. The system of procedure now in force in most of the states is also responsible for much of the widespread criticism. The practice of reversing the decisions of the lower courts and the granting of new trials for formal defects in indictments or for errors of procedure, has led to many deplorable miscarriages of justice and a consequent lowering of the popular respect for the courts as instrumentalities for the administration of justice.

See Courts and Unconstitutional Legislation; Executive and Judiciary; Judiciary and Congress; Legal Procedure, Proposed Reform of.

References: S. E. Baldwin, *The American Judiciary* (1905); *The Federalist*, Nos. 78, 79; J. W. Garner, *Introduction to Pol. Sci.* (1910), ch. xvii; J. Kent, *Commentaries on Am. Law* (12th ed., 1873), Lect. 14; H. Sidgwick, *Elements of Politics* (1897), ch. xxiv; J. Story, *Commentaries on the Constitution* (4th ed, 1873), ch. xxiv; W. Wilson, *Constitutional Government in the U. S.* (1908), ch. vi; W. H. Taft, *Present Day Problems* (1908), 290–332; P. S. Reinsch, *Readings on Am. State Gov.* (1911), 172–221.

James W. Garner.

JUDICIARY, STATE. See State Judiciary.

JUNKET. A term originally signifying a feast or banquet or a pleasure expedition, which in its political signification is applied to a trip under the auspices of a legislative body undertaken ostensibly for public purpose, but often a mere pleasure trip at the government's expense. O. C. H.

JURISDICTION. With reference to a sovereign power the term jurisdiction is usually employed to designate the territorial scope of the exercise of its authority; with reference to a court it usually designates either the territorial limits within which its power may be exercised or the extent of the power which it may exercise as to any particular case or controversy.

In the Federal Constitution the territorial jurisdiction of the states is referred to in the provision that "No new state shall be formed or erected within the jurisdiction of any other state" (Art. IV, Sec. iii, ¶ 1); and the territorial jurisdiction of the Federal Government is by the Thirteenth Amendment relating to slavery or involuntary servitude indicated to include not only the states but all places over which it may exercise its sovereign power, and in the Fourteenth Amendment the jurisdiction of the United States, territorially, is made the basis for the determination of citizenship by birth. In one sense, at least, the jurisdiction of the United States includes places not within its territorial limits, as when it is said that such jurisdiction extends to American vessels on the high seas and the establishment of an ambassador in a foreign country. The United States is also given exclusive jurisdiction over places ceded to it by the states for forts, arsenals, dockyards, and other needful buildings, and also over the District of Columbia (Art. I, Sec. viii, ¶ 17).

The provisions of the Federal Constitution for a system of courts to exercise the judicial power of the United States defines in a general way the scope of their jurisdiction as to subject matter; and Congress in creating courts inferior to the Supreme Court has specified the classes of cases as to which such judicial power may be exercised (*see* Courts, Federal, Jurisdiction of). Likewise, in the various states, courts are provided for in their constitutions, the scope of whose powers is defined by the constitution itself or by statute.

As to courts, the term jurisdiction has varied application. They are divided into courts of general jurisdiction and courts of limited jurisdiction, the former class including those which have all judicial power subject only to particular constitutional and statutory limitations, and the second class those tribunals which exercise only such particular or limited powers as are expressly conferred upon them. Courts are also divided into those of original jurisdiction, having authority to entertain and decide in the first instance cases and controversies, and courts of appellate jurisdiction, which have authority to review the decisions of inferior courts and tribunals. The jurisdiction of courts may also be spoken of as civil

or criminal and as legal or equitable, the distinction being as to the nature of the subject matter with which the court may deal, or of the forms of procedure which it may employ. As between the federal and state courts a distinction is made between cases of exclusive and those of concurrent jurisdiction.

Any action of a court in a case over which it has no jurisdiction is of no validity and may be disregarded. But the decision of the court within the scope of its jurisdiction is entitled to recognition everywhere as a final determination of the case submitted to it, and by special provision of the Federal Constitution the judicial proceedings of every state court having jurisdiction must be given full faith and credit in every other state (Art. IV, Sec. i).

Reference: W. F. Bailey, *Jurisdiction* (1899). EMLIN MCCLAIN.

JURISDICTION OVER FEDERAL SITES. **Pre-Constitutional.**—In colonial times the complete territorial jurisdiction of the colonial governments was limited: (1) by the Indian holdings (*see* INDIANS, CONSTITUTIONAL STATUS OF); (2) by crown lands not subject to grants by the colonial government; (3) for a short time by the Proclamation of 1763 (*see*), which restricted jurisdiction westward.

A similar division of authority appeared early in the Revolution in the rival claims of the Continental Congress and the states to the western lands; and it was adjusted by cessions by all the states in interest. From 1784 on, the United States was in possession of territory over which no state had jurisdiction. In 1912 no such territories were left in the main continental area.

Constitutional Provisions.—A clause in the Constitution assigned to the Federal Government "exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings" (Art. I, Sec. viii, ¶ 17). In addition the Constitution gives authority "to regulate commerce . . . with the Indian Tribes" (Art. I, Sec. viii, ¶ 3) and "to dispose of and make all needful rules and Regulations respecting the territory and other property belonging to the United States" (Art. IV, Sec. iii, ¶ 2). Under these clauses the powers already exercised under the Confederation over Indian laws, and over territorial governments were confirmed.

Occupation.—Notwithstanding the complete authority thus conferred over all sites for federal buildings and institutions, after the legislature had once consented, places purchased are not completely islands of federal jurisdiction within the states in the same sense that the District of Columbia and Indian reservations are withdrawn from state jurisdiction. The United States owns about 1350 plots of land occupied principally by buildings, most of them used jointly by postal, judicial, and fiscal officials of the United States. In addition there are about 160 military and naval forts, posts, stations, and yards, and three federal penitentiaries.

The Federal Government will not contract to pay for any land until the formal consent of the state legislature has been obtained. Such consents, however, commonly reserve the rights to serve process, that is to follow persons accused of crime, witnesses and criminals into the federal precincts, so that they may not become cities of refuge. Offenses occurring within those buildings, leaving out of account infractions of military law (*see*) are triable only before the United States courts; but those courts apply the criminal law and procedure of the state within which the site lies.

Difficulties.—Some efforts have been made to condemn pieces of government land for state or municipal purposes, such as streets, or parks. The general principle is that the Federal Government is not subject to condemnation of its lands by state authority; nor the state government by national authority.

The only serious constitutional question arising out of the jurisdiction over sites is the Fort Sumter episode (*see* COERCION OF STATES; REBELLION; SOUTH CAROLINA) in 1861. The federal troops were retained in Fort Sumter partly on the ground that it was under exclusive federal jurisdiction, having been ceded by the state government; the South Carolina contention was that it had been ceded only so long as South Carolina should remain in the Union; and that it must be presumed that it had not been ceded in order to give the Federal Government means to blockade the harbor.

See CONCURRENT POWERS; DOMICILE AND RESIDENCE; EMINENT DOMAIN; INDIAN RESERVATIONS; MILITARY OCCUPATION; POLICE POWER; PUBLIC LANDS AND PUBLIC LAND POLICY; TERRITORY, CONSTITUTIONAL QUESTIONS OF.

Reference: C. E. Hay, Jr., Compiler, *U. S. Military Reservations* (War Department, 1904). ALBERT BUSHNELL HART.

JURISDICTION OVER WATERS. The jurisdiction over coast waters is by general consent, and often by conventional agreement, extended to three miles from the low water mark. This limit is based on the theory of Bynkershoek (1702) who proposed that the right of jurisdiction should extend as far as it could be exercised effectively which, through the range of cannon at that time, was about three marine miles. Somewhat more extended jurisdiction is exercised for sanitary, police and customs purposes.

The right of innocent passage through coast waters is usually regarded as open to all in time of peace; and offences which take place on board vessels within the territorial waters of a state are considered within the jurisdiction of the state whose flag the vessel flies, unless the act affects some party outside the vessel or disturbs the peace of the state in whose jurisdiction the vessel may be.

The jurisdiction over straits, rivers, or narrow waters, six miles or less in width, lying between two states, in absence of conventional agreement is held to extend to the middle of the navigable channel.

There is much divergence in opinion as to jurisdiction over gulfs and bays. It is admitted that when the opening to the sea is not more than six miles in width the general jurisdiction is in the state or states within whose territory the waters are. The jurisdiction over inland seas is similar.

The jurisdiction over rivers in absence of conventional agreement is: (1) as regards rivers wholly within a state, exclusive in that state; (2) as to rivers partly within a state, exclusive as to the part within the state; (3) as to rivers flowing between states, each state has jurisdiction to the middle of the river, or if navigable, to the middle of the channel (*see* NAVIGATION OF INTERNATIONAL RIVERS).

The Supreme Court of the United States, in 1905, said in regard to a ferryboat plying between Tennessee and Arkansas, that:

> A state may, in the exercise of its police powers, exact a license fee as a condition to sell intoxicating liquors over the bar on board of a steamboat while within the boundaries of the State, notwithstanding such boat is navigating the Mississippi and engaged in interstate commerce. Such a license fee does not in any way violate the freedom of the navigation of the Mississippi River as guaranteed by treaties and statutes.

See BLOCKADE; HIGH SEAS; LAKES, JURISDICTION AND NAVIGATION OF; MARE CLAUSUM; PORTS, JURISDICTION IN; RIGHT OF VISIT; THREE-MILE LIMIT; VESSELS; WATER BOUNDARIES.

References: Fopino *vs.* Speed, 199 *U. S.* 501; L. Oppenheim, *Int. Law* (1912), I, 239–273; G. G. Wilson, *Int. Law* (1910), 97–120; North Atlantic Coast Fisheries Arbitration, *Report*, 1910.

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JURISPRUDENCE

The Science of Law.—Jurisprudence is the science of law, using the term law in its juridical sense, as denoting the body of principles recognized or enforced by public or regular tribunals in the administration of justice (*see*). As law is a means toward the administration of justice, jurisprudence is to that extent the science of justice; not of justice in general, however, but of justice applied to the relations of men with each other, of men with the state or society, and of states with each other, so far as it may be so applied by tribunals in organized societies. The problems of jurisprudence are: (1) the nature of law; (2) the scope of effective legal action in adjusting human relations and regulating human acts; (3) the modes of effective law making, or, as it is put usually, the sources from which legal rules are drawn and the forms in which they are expressed; (4) application and enforcement of law. Its materials are drawn, on the one hand, from philosophy, ethics, economics, politics and sociology, and, on the other, from legal history, comparative law, and dogmatic study of particular legal systems. Anglo-American jurists, almost without exception, have pursued either the analytical or the historical method. Hence the criticism frequently made by economists and sociologists, that legal science neglects unduly the former class of materials, is not without foundation. But it is equally true that lay critics seldom appreciate the importance of the other class nor take account of the inherent difficulties in the administration of justice according to law which legal history and comparative law bring home to the jurist.

Interpretations of Jurisprudence.—There have been four ways of interpreting legal history, and hence four ways of approaching jurisprudence. (1) The idealistic view traces the development of the idea of justice as an ethical and moral phenomenon and its manifestation in the principles applied by the courts. It seeks the metaphysical or philosophical basis of justice and right as ideas. Upon the former it builds legal history, upon the latter, jurisprudence. This was the standpoint of the philosophical jurists in the nineteenth century. (2) The political view assumes that a movement from subjection to freedom, from status to contract, is the key to both legal and social development. It sees the end of all law in liberty and conceives of jurisprudence as the science of civil liberty. As Lorimer puts it, "the proximate object of jurisprudence, the object which it seeks as a separate science, is liberty." This view has prevailed almost exclusively in England and America under the influence of Sir Henry Maine. (3) The biological or ethnological view arose in connection with the rise of comparative law under the influence of the older sociological jurists, to whom biology appeared all-sufficient to furnish laws for the super-organic as well as the organic. Accordingly, those who took this view looked chiefly to the ethnological environment of laws and found in the surroundings and characteristics of the races of men among whom laws exist the determining fac-

tors in juridical progress and in legal institutions. It was much in vogue in the last half of the nineteenth century while the social-philosophical school of jurists was formative. (4) The economic view has been urged chiefly in America. Brooks Adams, its leading exponent, asserts that the idea of justice has had nothing to do with the actual course of legal development. He maintains, to quote his own words, that "the rules of law are established by the self-interest of the dominant class, so far as it can impose its will upon those that are weaker."

There is much truth in each of the foregoing interpretations. But the first and fourth have more warrant in the history of legal systems than the other two. Three influences appear to have been of chief importance in determining the actual content of legal systems: (1) The ideal of an absolute, eternal justice to which jurists and judges have sought to make the rules enforced in the tribunals approximate so far as possible. This has been the controlling influence in the classical periods, the periods of growth, of both of the two great legal systems—in the period of the *jus naturale* in Roman law, and the period of the school of natural law on the continent in the seventeenth and eighteenth centuries; in the period of the rise of the court of chancery and development of equity in England and the period of American common law, when the traditional principles of English case law were made over to meet the requirements of America in the first three quarters of the nineteenth century. (2) Juristic tradition, that is, traditional principles and traditional modes of reasoning therefrom. This is the chief influence in determining the bulk of the rules actually in force in any legal system at any given time. (3) The self-interest of the dominant class in the community for the time being.

The first and second of these influences affect and, for the most part, determine the traditional or historical element in legal systems, *i. e.*, case law or judge-made law and doctrine or jurist-made law. The third affects chiefly and to a large extent determines the imperative element in legal systems, that part which is made consciously, *i. e.*, legislation. For this reason it has played the least part in legal development. In the long run, as criteria for the decision of controversies between man and man, more or less arbitrary expressions of will cannot prevail over reasoned attempts to attain an ideal justice based upon the experience of past litigation. So far as legislation gives improved form to the judicial and juristic experience of the past, it succeeds in becoming a permanent part of the legal system. So far as it is enacted without regard to the principles among which it must take its place in the general body of the law, it has usually failed of lasting effect. Hence legislation which is purely imperative in character, which has authority rather than reason and judicial experience for its basis, has proved to have but little effect upon the course of the law.

Schools of Jurists. (1) Analytical.—In general, jurists may be grouped in four schools: (1) analytical; (2) historical; (3) philosophical; (4) sociological. The analytical jurist pursues a comparative study of the purposes, methods and ideas common to developed systems of law, by analysis of such systems and of their doctrines and institutions in their matured forms. This method is appropriate only to developed legal systems and as the growing point in a matured system comes to be more and more in legislation, the analytical theory of law has always been imperative or positive. In England, the supremacy of parliament has led jurists to adopt this theory. In Germany, the rise of legislation under the empire and the enactment of the code, while not leading to an analytical school, have given an analytical turn to historical and philosophical jurists. Briefly, the characteristics of the analytical jurists are: (1) they look to developed systems only; (2) they regard law as something made consciously. As Munroe Smith puts it, they conceive of law as "a product of conscious and increasingly determinate human will;" (3) they lay stress upon the force and constraint behind legal precepts; to them law is a body of rules; (4) they take statutes to be the typical form of law; (5) their philosophy is utilitarian or teleological. The founder of this school is John Austin (1790–1859; *Province of Jurisprudence Determined*, 1832).

(2) Historical.—The historical jurist pursues a historical study of the origin and development of law, legal systems, and particular doctrines and institutions. He thinks of law as something that is found, not made, conceiving that principles of human action or of social action are found by experience and are gradually developed and expressed in rules. He is skeptical with respect to legislation, holding that ambitious schemes of legislation seek to achieve the impossible by making at one stroke what may only be found and developed by judicial and juristic experience. In comparison with the other schools, the characteristics of the historical jurists may be said to be: (1) they look to the past of law rather than to the present; (2) they regard the law as something that is not and in the long run cannot be made consciously; (3) they lay stress chiefly upon the social pressure behind legal precepts; (4) they look upon custom, or those customary modes of decision that make up a body of juristic tradition or of case law, as the type; (5) for the most part they have been Hegelians in their views with respect to the philosophy of law. This school prevailed in Germany during the nineteenth century and in the comparative form given to

it by Sir Henry Maine (1822–1888; *Ancient Law,* 1861) has had almost undisputed dominance in American teaching of legal science. The founder of the school is F. C. von Savigny (1779–1861; *Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft,* 1814).

(3) Philosophical.—The philosophical jurist seeks the philosophical and ethical bases of law; legal systems and particular doctrines and institutions, and criticizes them with respect to such bases. To him, as to the historical jurist, law is found rather than made; but he holds that principles of right and justice are found and developed into rules. Hence in comparison with the analytical school, the philosophical jurist and the historical jurist are at one on many points. The chief differences are: (1) The philosophical jurist is more inclined to consider the ideal future of law than its past or its present; but this is not true of recent philosophical jurists, who deem it their duty to work out a philosophy of the law that is. (2) While agreeing that law is found, not made, he has no objection to the development of a principle by legislation when found. Indeed, on the whole, philosophical jurists have favored legislation, and codification was a chief tenet of the law-of-nature school in the eighteenth century. (3) He considers sanction of little importance, laying stress chiefly upon the ethical and moral aspects of legal precepts. Philosophical jurisprudence was the dominant type everywhere until the rise of the historical school in Germany at the beginning of the nineteenth century and the rise of the analytical school in England about the middle of that century. It has prevailed in France and Italy at all times. It has had three phases, represented by the law-of-nature school of the seventeenth and eighteenth centuries (founder, Hugo Grotius, *De Jure Belli ac Pacis,* 1625), the metaphysical school of the nineteenth century (beginning, on the whole with Kant's *Metaphysiche Anfangsgründe der Rechtslehree* 1787), and the social philosophical school of the twentieth century.

The first group is represented to-day by Rousseauists in France and in America, by publicists of the older type and, to some extent, by Anglo-American lawyers bred on the introductory chapters of Blackstone. They hold that law is simply declaratory of principles which inhere in human nature and are discoverable by abstract reason. This theory, universally accepted when the Federal Constitution was adopted, is to be seen in our *bills of rights* (*see*) and in the decisions which settled for the courts the scope and character of their provisions. The second group has modern representatives in Scotland, Italy, France and possibly Germany. Its method is to deduce a whole system from some assumed first principle, and to test or account for legal systems, institutions and doctrines thereby. Thus, Boistel (*Cours de Philosophie de Droit,* 1899), who is one of the best recent representatives, deduces a whole system from a principle of respect for personality. The social-philosophical group, to which almost all recent philosophical jurists are to be assigned, shows three types: the social utilitarians, whose tendency is analytical and sociological; the Neo-Kantians, whose tendency is philosophical and sociological; and the Neo-Hegelians, whose tendency is historical and sociological. These three groups represent different phases of a reaction from the historical jurisprudence which prevailed during the nineteenth century.

(4) Sociological.—A radical change began when the social utilitarians turned their attention from the nature of law to its purpose. The founder of this group, R. von Jhering (1818–1892, *Der Zweck im Recht,* 1877–1883) insisted upon the importance of regarding law as a means rather than as an end and sought to oppose to the "jurisprudence of conceptions," which the Romanists had brought about through the historical school, a "jurisprudence of realities" in which legal precepts should be worked out and should be tested by their results—by their practical application and not soley by logical deduction from the principles discovered by historical study of Roman and Germanic law. Like the analytical jurists, they conceive of law as something that is made consciously and they hold that the ends for which it is made must be accorded chief importance. The Neo-Kantians put the prime emphasis on justice in each concrete case. Therefore, a just abstract rule had been the aim. They urge that rules are to be regarded as guides to just results in each case rather than as inflexible molds into which every case is to be fitted. They have started the problem of application of rules, which is a burning question in recent juristic literature. The Neo-Hegelians of whom Kohler is the leader (*Lehrbuch der Rechtsphilosophie,* 1910), insist upon more power of development and adaptation in the legal system. Their fundamental position is that law reflects the culture (in the German sense) of a people. Accordingly they hold that law must be kept in an intimate relation to social development and urge a social interpretation of legal precepts in place of the current technical juristic interpretation. Thus in general, under the influence of the social-philosophical schools, application and enforcement have become the central problems. Through them, recent jurists have been led to investigate the nature of the legal order, toward which law is an end, rather than the nature of law itself.

The sociological school is still formative and in diversity of view its adherents but reflect the diversities that exist among sociologists. This, however, is no more a ground for denying the existence of such a school than

differences among sociologists are ground for denying that there are sociologists. The earlier types of sociological jurist stood for the biological or ethnological view of jurisprudence and gave disproportionate attention to the institutions of primitive peoples. In consequence the social-philosophical jurists, who applied themselves to problems of the present law, have contributed more to a sociological jurisprudence than the professed sociologists. The most important contributions have been made by the Italian sociological criminalists. But they wrought in the era of the biological sociology, and their work exhibits strikingly the defects of that phase of social science. Unhappily many assume that their interpretation must stand always for sociological jurisprudence. Next in importance has been the contribution of the workers in so-called ethnological jurisprudence who have overthrown the favorite proposition of the historical jurists, that law is a product of the genius of a people. Indeed, analytical jurists had shown that this could be true only of what has been called the political element in legal systems and that it had no validity for the technical element, *i. e.*, that part which takes the form of juristic working over of traditional juristic materials. But comparative study of primitive legal systems has shown much more than this. "Over and above nation and race," says Fehr, "there must be conditions of producing law which have universal force. The fundamental forms of the spiritual social life, from which all law springs forth, are more independent of race and nation than the historical school admits. The similarity of the law in cases of extreme dissimilarity of race can only be explained by a common human basis. . . . It is not possible to deduce all law from the special national character of a people." More recently sociological jurists have turned their attention to the social history of law (*Sozialrechtsgeschichte*), that is, the development of social life with respect to its relation to legal norms.

But the latest and most significant movement builds upon the work of the social-philosophical jurists and insists upon taking social interests into account as the interests secured by legal precepts, calls for social interpretation of legal doctrines and principles, and urges that legal rules be applied in a social manner. He who interprets the law, says Kohler, is not to seek simply the intent of the law-maker. The latter thought the thoughts of his time and place. The legal precept represents the intention of society, and took from the law-maker simply its form and style. He wrote this with reference to a code. But in a system of unwritten law, such as our own, we have equally to remember that analysis of and deduction from decisions, without taking account of the social conditions that speak through them, must lead to a legal system out of all touch with the community to which it is to be applied. Not a little in the constitutional law of the United States may be cited by way of illustration.

Comparing the sociological jurists with the older schools, we may say: (1) Formerly they looked chiefly and too exclusively to the law of primitive peoples. Today, they consider the present law, but more with respect to its workings than to its contents. (2) They regard law as something which to a large and growing extent depends upon human choice, but not necessarily upon a legislative or arbitrary choice. On the other hand they show a preference for juristic or magisterial choice of the precept or interpretation that best furthers the ends of law. (3) They lay stress upon the social purposes which law subserves rather than upon sanction. (4) They have no necessary preference for any form of law but urge that legal precepts are to be regarded more as guides and less as inflexible molds. (5) Their philosophical views are very diverse. At first they were positivists. Recently, they have adhered to some one of the groups of the social-philosophical school, from which indeed the sociological school, at present, in essential points, is not easily distinguishable.

Application of Law.—In England and America jurists are still concerned chiefly with the problem of the nature and sources of law. The problem of application of law has received but scant attention. Nevertheless it is a problem of the first rank in our own legal system. Three modes of applying legal norms exist in all systems. One method is to endeavor to find the proper dogmatic pigeon-hole for each cause, to put the case in hand into it by a purely logical process and to formulate the result in a judgment. The standpoint of those who apply this method is essentially analytical, and it may be called analytical application of the law. Like the analytical theory of law, it is a concomitant of legislation, and so has come into vogue in Europe with the adoption of modern codes. It is especially adapted to the security of property and so has accorded with the importance which Anglo-American law attributed to proprietary interests in the nineteenth century.

Another method proceeds upon the conception that any legal precept or doctrine is but a continuation and development of pre-existing law. Those who adhere to this method hold that all exposition must begin with an elaborate inquiry into the pre-existing law and into the history of the competing juristic theories among which those who laid down the rule had to choose. After this inquiry, however, the method is much the same as the analytical method. The latter proceeds on the idea that the rule to be applied is a command of the sovereign, to be regarded in and of itself. The former proceeds on the view that it is a development of the juristic theory of the past.

By either method, however, when the rule is interpreted and its content is ascertained the process of application is purely logical. This second method may be called one of historical application of law.

A third method has been advocated in continental Europe in recent years. Those who contend for this method start from the idea that the essential thing is a reasonable and just solution of the individual controversy. They contend for individualized application. They urge that application of law is more than a mechanical process, that logic is not an all-sufficient instrument, and that the rule is to be fitted to the cause, not the cause to the rule. This theory of what has been called equitable application of law is a modern development under the influence of sociological thought. It has no exponents in America, although the method itself is coming to be applied subconsciously more and more by many of our courts. The result is a crude individualization in application of law which is unhappy in its results. Undoubtedly Anglo-American jurists must think upon this problem as well as jurists elsewhere.

See EQUITY; JUSTICE; POLICE POWER; RIGHTS AND REMEDIES; and under LAW.

References: M. Smith, *Jurisprudence* (1908); J. C. Gray, *The Nature and Sources of Law* (1909); W. J. Brown, *The Austinian Theory of Law* (1906); J. W. Salmond, *Jurisprudence* (2d ed., 1907); for the philosophical and sociological views, R. Stammler, *Die Lehre von dem richtigen Rechte* (1902), *Wirthschaft und Recht* (2d ed., 1906); A. Menger, *Ueber die sozialen Aufgaben der Rechtswissenschaft*, (2d. ed., 1905); F. Berolzheimer, *System der Rechts und Wirthschaftsphilosophie* (1905), II; J. Kohler, *Lehrbuch der Rechtsphilosophie* (1910); R. Bierling, *Juristische Prinzipienlehre* (1911), IV; H. U. Kantorowicz, *Rechtswissenschaft und Soziologie* (1911); H. Rolin, *Prolegomènes à la Science du Droit* (1911); R. *Demogue, Les Notions fondamentales du Droit Privé* (1911). ROSCOE POUND.

JURY COMMISSIONS. Jury commissions are selected by the courts usually, and are frequently bipartisan, made up of two members of each party. There is nothing compelling the commission to place any particular name in the lists for jury service. Jurors may be selected from special *venire*, under the direction of the court. See JURY, PETIT.

Reference: S. E. Baldwin, *Am. Judiciary*, (1905), 192. T. N. H.

JURY, GRAND. In the early history of English law provision was found for the selecting from the free-holders of the county of a body of persons not exceeding twenty-four in number who should be summoned and sworn to inquire into matters of public concern and especially as to the commission of crimes, and report to the King's court that prosecutions might be instituted against them in the King's name. This body of persons was first called *"le graunde inquest"* and subsequently came to be known as the grand jury. Statutory provision for the summoning of such a body was first made during the reign of Edward III (1368). This institution was no doubt a development of the system of inquests under royal authority introduced into England by the Normans (*see* JURY, PETIT), but in its distinctive characteristics it was not of Norman origin, nor was it in existence among the Anglo-Saxons prior to the Norman period.

As it existed in England at the time the colonies became independent and continued to be recognized in the states, the grand jury consisted, and still consists, in the absence of constitutional or statutory modification, of a body of persons not less than thirteen nor more than twenty-three in number, duly selected and sworn, under the authority of a court having authority to inquire as to the commission of crimes within the territorial jurisdiction of the court and to make presentment thereof by indictment.

The right of exemption from trial for a capital or otherwise infamous offense, otherwise than on presentment of indictment of a grand jury, is guarnateed as to the federal courts by the Constitution (Amendment V), and in the states there are similar constitutional guaranties as to the state courts. An infamous offense, as the term is used in the Federal Constitution, means a crime the punishment of which may be penitentiary imprisonment. Under state constitutions the guaranty extends to charges of felony and sometimes to lesser offenses.

Constitutional guaranties of the right to be tried for crime only on indictment by a grand jury imply a common law grand jury of whose number at least twelve concur in the finding of the indictment, but by provisions in state constitutions a smaller number of grand jurors than required by the common law and the concurrence of a smaller number than twelve in the finding of the indictment may be authorized.

Due process of law in criminal cases, while it implies some formal charge of a crime for which the accused is to be put on trial and the opportunity to meet such charge in a regular judicial proceeding after proper notice and with opportunity to defend, does not necessarily imply that such charge be made by the indictment of a grand jury; therefore the guaranty of due process of law in the Fourteenth Amendment as against state action does not prevent the modification or entire abolition of the common law grand jury by the states.

The general preservation, however, of the grand jury system is to be explained not only by reference to its history but also by consideration of the fact that it affords a de-

sirable safeguard against the unwarranted ignominy of being put on public trial for an offense which there is no reasonable ground to believe the accused has committed. The course of procedure in the selection of a grand jury and in the conduct of its investigations is directed towards this end. The persons selected are to be those who would be qualified to sit on a trial jury. The grand jury is to investigate the cases of those who have been arrested and held under preliminary information on oath by private accusers; and it may also investigate cases of supposed crime of which it has knowledge or to which its attention may be called by the public prosecuting officer. Its proceedings are secret and its members are sworn not to subsequently divulge them. An indictment can be found only on the testimony of witnesses examined under oath and the grand jury may give to the accused an opportunity to explain by his own testimony or that of witnesses called by him the circumstances which seem to be incriminating. The charge of crime is formulated in an indictment which is returned to the court if the requisite number of grand jurors concur therein; otherwise the indictment or charge is ignored. It is usual to provide that minutes of the testimony of the witnesses examined be kept and returned with the indictment to the court.

By statutes, grand juries are usually required on the direction of the court to inquire into certain matters of public concern, such as the conduct of public officials, in order that proper proceedings in court with reference thereto may be taken; but in general they do not make report in such matters unless criminal conduct has been discovered.

Reference: G. J. Edwards, *The Grand Jury* (1906). EMLIN MCCLAIN.

JURY, PETIT. Constitutional Provisions.—Trial by jury involves the determination in a court of law of issues of fact by a body of persons chosen for the purpose called specifically a petit jury as distinguished from a grand jury, which is a body of persons chosen to conduct a preliminary investigation as to the commission of crime (*see* JURY, GRAND). Jury trial as an institution was early developed in England and in its essential characteristics is peculiar to the English system of law. It is popularly supposed to have been guaranteed in Magna Charta, but as now understood it was not in existence at that time and was not referred to or anticipated in the famous provision as to "lawful judgment of his peers" or "the law of the land." But prior to the settlement of America it had become an institution of such definite character and such well recognized use in courts of law, that it is essentially recognized and guaranteed in all of our state constitutions as well as in the Federal Constitution (Art. III, Sec. ii, ¶ 3). It is perhaps the most important institution which has been accepted without substantial modification from England.

Our constitutional provisions relate essentially to the preservation of jury trial as it existed in England and the colonies at the time of independence and are typically represented by the provisions in the Federal Constitution that "trial of all crimes . . . shall be by jury;" that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury" (Sixth Amendment); and that "in suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved." (Seventh Amendment). These provisions of the Federal Constitution are applicable only to trials in the federal courts. The guarantee of due process of law (*see* DUE PROCESS OF LAW) in the Fourteenth Amendment as against infringement by the states does not necessarily preserve trial by jury in the state courts, unless it may be in criminal cases, for in some classes of judicial proceedings, such, for instance, as trials of cases in equity or in admiralty, juries were not essential nor usual. And the provision as to due process of law has not been interpreted as necessitating the preservation of jury trial in the states even in cases at law which were usually so tried at the time of the adoption of the Fourteenth Amendment.

Characteristics.—The essential features of trial by jury are: (1) the selection for the particular case to be tried of a number of persons, usually twelve, citizens of the state and residents of the county, possessing qualifications specified by law who are sworn to hear the evidence and return a verdict in that case; (2) the trial of the issues of fact in the case before this body of persons under the direction of a judge, who decides upon the admissibility of the evidence offered in accordance with rules of law and gives directions to the jury as to the principles of law applicable to the evidence received; (3) a consultation of the members of the jury as to the evidence received by the court considered with reference to the principles of law announced by the judge in his instructions; (4) the return of a general verdict in the affirmative or negative as the result of a unanimous agreement of the jury; and (5) the acceptance of such verdict by the court as a final determination on the issues of fact submitted in the case.

Selection and Qualifications of Jurors.—The method of selection of the jurors for the trial of the case is determined by rules of procedure usually fixed by statute, and their necessary qualifications are likewise thus fixed by the court, the object being to secure persons who can hear and understand the evidence as presented and, without bias, prejudice or favoritism, ascertain the truth as to the facts.

Functions of Judge and Jury.—The jury determines the questions of fact submitted to it by the court on the evidence received under the directions of the court as to the law applicable to the case and returns a general verdict in the case as thus presented for its determination. After an acquittal in a criminal case the accused cannot be again put on trial for the same crime and the verdict is therefore final although contrary to the principles of law announced by the court or contrary to the evidence received (*see* JEOPARDY). But in civil cases and in criminal cases in which a verdict of guilty is returned the court may determine as matter of law whether the evidence received furnishes any support to the verdict as returned and may set aside the verdict and grant a new trial on account of lack of any evidence to support the finding of the jury or on account of passion or prejudice manifested in the jury's verdict or on account of misconduct of the jurors in their relations to the case. On a review in an appellate court by appeal (*see*) or writ of error (*see*) the determination by the jury of a question of fact properly submitted as to which the evidence is in conflict, is conclusive and can not be investigated for the purpose of redetermining the correctness of the jury's conclusions. This principle is embodied in the provision of the Federal Constitution that "no fact tried by jury shall be otherwise reëxamined in any court of the United States than according to the rules of the common law" (SEVENTH AMENDMENT).

Number of Jurors: Unanimity of Verdict.—A common law jury consists of twelve men accepted as possessing the proper qualifications to try the case. The number is one fixed by custom so well settled before the adoption of our constitutions that jury trial as guaranteed in them necessarily means a trial by jury of twelve. But there may be provisions for jury trial in cases in which the right of jury trial is not constitutionally guaranteed and the number of jurors in such cases may be regulated by statute and a trial by a less number authorized. Furthermore, as already suggested, there is nothing in the Federal Constitution to necessitate the preservation of jury trial in the state courts and by the provisions of a state constitution the number of jurors may be regulated. The common law rule requiring unanimity of verdict is also subject to modification for state courts in state constitutions, and in some states a verdict acquiesced in by a specified number of the jurors less than all is authorized.

See IMMUNITY; TRIALS.

References: J. Story, *Commentaries on the Constitution* (5th ed., 1891), §§ 1763–1773, 1778–1782; H. C. Lodge, Ed., *The Federalist*, No. 83 (1888); H. C. Black, *American Constitutional Law* (3d ed., 1910), 618–630, 682; W. Forsyth, *History of Trial by Jury* (1852); J. Proffat, *Jury Trial* (1877); Lesser, *History of Jury System* (1894); J. B. Thayer, *Preliminary Treatise on Evidence* (1896), containing articles appearing in *Harvard Law Rev.*, V, 1891–2, 45, 249, 295, 357; J. E. R. Stephens, "Growth of Trial by Jury in England" in *Harvard Law Rev.*, X, 1896–7, 150; as pertinent cases, see Capital Traction Co. *vs.* Hoff (1899), 174 *U. S.* 1; Maxwell *vs.* Dow (1900), 176 *U. S.* 581.

EMLIN MCCLAIN.

JUS SANGUINIS. Law of the blood. A term commonly used to indicate that nationality of the child follows that of the parents.

G. G. W.

JUS SOLI. Law of the locality. The term commonly used to indicate that nationality is determined by place of birth. See JUS SANGUINIS.

G. G. W.

JUSTICE. It is difficult to formulate a satisfactory definition of justice. Perhaps the best way to obtain a conception of it is to consider its relation to the words most closely associated with it, law and morals. There is no doubt that the measure of just conduct is in many cases its conformity to positive law; for law presupposes ideas of justice in some form or other; and justice is the ostensible goal aimed at in the development of law both by legislatures and by courts. Moreover, our notion of justice furnishes us with a standard whereby to judge law. In popular speech the obtaining of justice is synonymous with obtaining our legal rights; and, furthermore, "courts of justice" and "courts of law" are used as interchangeable terms. Leading writers have, indeed, declared that no law can be unjust. But reflection shows us that justice and law are by no means commensurate. The administration of justice is the function of the state. Law is secondary to this function. It [law] consists of fixed principles in accordance with which such function is exercised. "It consists of the preëstablished and authoritative rules which judges apply in the administration of justice, to the exclusion of their own free will and discretion." "The law is the theory of things, as received and acted on within the courts of justice, and this theory may or may not conform to the reality of things outside." "The law, if it is to be a workable system, must needs be blind to many things, and the legal theory of things must be simpler and less elaborate than the reality. Partly by deliberate design, therefore, and partly by the errors and accidents of historical development, law and fact, legal theory and the truth of things, are far from complete coincidence." "Legal justice may conflict with natural justice" (Salmond). For instance, a debtor, on whose debt the statute of limitations has run is under no legal duty to pay his creditor; yet, if he refused to do so,

his conduct might be considered immoral and unjust. Likewise there is no obligation in law upon one who makes a gratuitous oral promise to perform it. Yet his neglect to do so might well stamp him as immoral and unjust. Nor can we call all violators of law unjust, but only violators of some laws. The violators of the Fugitive Slave Law were not law observers, but might well have been acting justly.

Nor can we say on close analysis that the words just and moral are commensurate. If the sole survivor of a ship cast on a desert island is also the owner of her cargo of champagne, it may not be unjust for him to spend his time in drinking up the cargo but it is certainly his moral duty not to do so. Justice is existent only in respect to that part of the conduct of an individual in which others are concerned. It is "a tendency of the will and mode of conduct which refrains from disturbing the lives and interests of others, and, as far as possible, hinders such interference on the part of others" (Paulsen). The interests of others which one ought to refrain from disturbing and to prevent others from disturbing are: his life and body, his family, his property, his honor, and his freedom. Infringement of these interests is injustice. Regard for these interests, performance of the duties not to infringe them, is justice.

See EQUITY; JURISPRUDENCE; and under LAW.

References: J. W. Salmond, *Jurisprudence* (3d ed., 1910), ch. ii; H. Sidgwick, *The Methods of Ethics* (6th ed., 1901), Bk. III, ch. v; J. C. Carter, *Law, Its Origin, Growth and Function* (1907); F. Paulsen, *Ethics* (Thilly's translation, 1899), ch. ix. JOSEPH WARREN.

JUSTICE, DEPARTMENT OF. Organization.—In 1870, Congress created the Department of Justice, at the head of which it placed the Attorney General, who had been a member of the President's Cabinet since the office was created in the judiciary act of 1789. The supervision over the accounts of the United States courts was taken from the Department of the Interior. The various law officers of the government, distributed among the various departments, were placed under the jurisdiction of the Attorney General, thereby securing uniformity in the construction and administration of the laws, which theretofore had been lacking. The act of 1870 also created the office of solicitor general, whose duty it is to assist the Attorney General, and, in his absence or incapacity, to act in his stead. The solicitor general, subject to the direction of his chief, conducts and argues in the various courts in Washington cases in which the United States is a party; he prepares opinions rendered to the President and heads of departments, and directs law officers of the government throughout the country; he receives a salary of $10,000, or $2,000 less than the head of the department. There is an assistant to the Attorney General who has special charge of matters arising under federal anti-trust and interstate commerce laws, and who draws $7,000 annual pay.

Division of Work.—The seven assistant attorneys general, each of whom draws a salary of $5,000, assist in the argument of cases in the supreme court; aid in the preparation of legal opinions; defend suits in the court of claims; conduct the defense in Indian depredation claims; and attend to the government interests in matters of reappraisement and classification of imported goods. A division of public lands is charged with the enforcement of public-lands laws, including suits to set aside conveyances of allotted lands. The legal affairs of the Departments of War and the Navy are conducted by the judge advocates general (*see*), who are not under the department of justice; but each of the other departments has a legal officer who is under the jurisdiction of the Attorney General. The Department of the Interior has an assistant attorney general who deals with appeals from the general land office, hears oral arguments or receives briefs, and prepares opinions to be signed by the assistant secretaries of the department. The solicitor of the Department of State advises the Secretary on matters of international and municipal law, passes upon claims of citizens against other governments or of foreigners against the United States, and upon applications for extradition. The solicitor of the Treasury deals directly with marshals and clerks of courts in matters relating to frauds on the revenues; examines titles to lands purchased for life-saving station sites, and issues warrants against delinquent treasury officials. The solicitor of internal revenue has charge of compromise cases and other legal matters relating to that bureau. The assistant attorney general for the Post Office Department and the solicitors of the Departments of Commerce and of Labor perform duties assigned by the heads of those departments. Each of these officers draws an annual salary of $5000; and he has an office in the department to which he is assigned.

The Department of Justice employs a staff of 29 attorneys who receive salaries ranging from $5000 to $2000; law clerks, a pardons attorney, a superintendent of prisons, and a large staff of examiners. There are also the usual offices for handling the administrative business within the department.

Jurisdiction over United States Courts.—While the judiciary of the United States is independent, and the judges are in no sense responsible to the Attorney General; yet the district attorneys, clerks and marshals of the United States courts are under the jurisdiction of the Department of Justice, and a large portion of their duties relates to suits brought by the United States. The direction of the

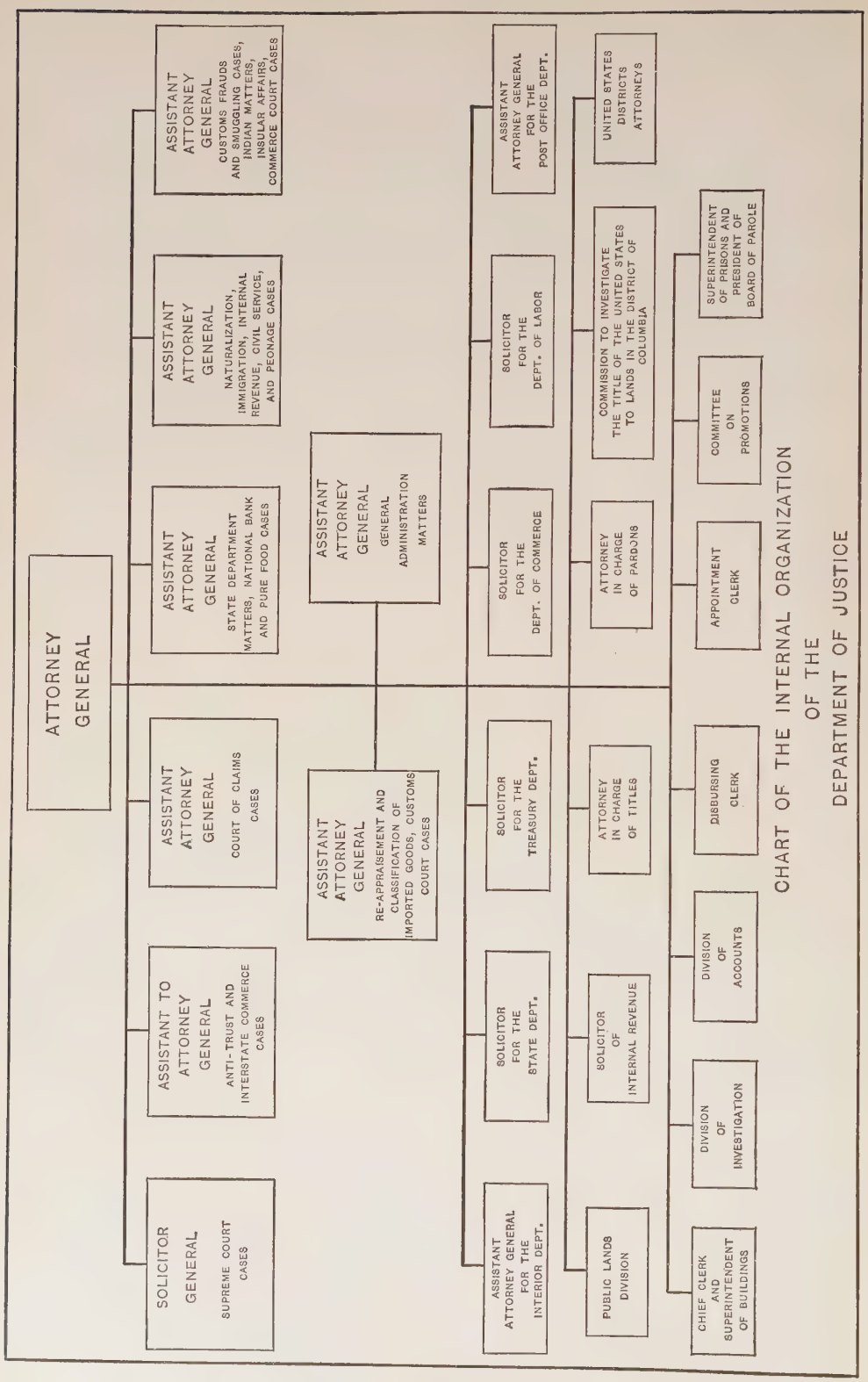

ATTORNEY GENERAL
SOLICITOR GENERAL
SUPREME COURT CASES
ASSISTANT TO ATTORNEY GENERAL
ANTI-TRUST AND INTERSTATE COMMERCE CASES
ASSISTANT ATTORNEY GENERAL
COURT OF CLAIMS CASES
ASSISTANT ATTORNEY GENERAL
STATE DEPARTMENT MATTERS, NATIONAL BANK AND PURE FOOD CASES
ASSISTANT ATTORNEY GENERAL
NATURALIZATION, IMMIGRATION, INTERNAL REVENUE, CIVIL SERVICE, AND PEONAGE CASES
ASSISTANT ATTORNEY GENERAL
CUSTOMS FRAUDS AND SMUGGLING CASES, INDIAN MATTERS, INSULAR AFFAIRS, COMMERCE COURT CASES
ASSISTANT ATTORNEY GENERAL
RE-APPRAISEMENT AND CLASSIFICATION OF IMPORTED GOODS, CUSTOMS COURT CASES
ASSISTANT ATTORNEY GENERAL
GENERAL ADMINISTRATION MATTERS
ASSISTANT ATTORNEY GENERAL FOR THE INTERIOR DEPT.
SOLICITOR FOR THE STATE DEPT.
SOLICITOR FOR THE TREASURY DEPT.
SOLICITOR FOR THE DEPT. OF COMMERCE
SOLICITOR FOR THE DEPT. OF LABOR
ASSISTANT ATTORNEY GENERAL FOR THE POST OFFICE DEPT.
PUBLIC LANDS DIVISION
SOLICITOR OF INTERNAL REVENUE
ATTORNEY IN CHARGE OF TITLES
ATTORNEY IN CHARGE OF PARDONS
COMMISSION TO INVESTIGATE THE TITLE OF THE UNITED STATES TO LANDS IN THE DISTRICT OF COLUMBIA
UNITED STATES DISTRICTS ATTORNEYS
CHIEF CLERK AND SUPERINTENDENT OF BUILDINGS
DIVISION OF INVESTIGATION
DIVISION OF ACCOUNTS
DISBURSING CLERK
APPOINTMENT CLERK
COMMITTEE ON PROMOTIONS
SUPERINTENDENT OF PRISONS AND PRESIDENT OF BOARD OF PAROLE

CHART OF THE INTERNAL ORGANIZATION OF THE DEPARTMENT OF JUSTICE

action of district attorneys, however, must relate to specific cases; it cannot be general in its nature, the object being to maintain the independence of the courts.

See ATTORNEY GENERAL; CABINET OF THE PRESIDENT; EXECUTIVE AND CONGRESS; EXECUTIVE DEPARTMENTS.

References: J. A. Fairlie, *National Administration of the U. S.* (1905); H. B. Learned, *The President's Cabinet* (1911); M. L. Hinsdale, *The Cabinet of the President* (1911); *Congressional Directory*, year by year.

CHARLES MOORE.

JUSTICE OF THE PEACE. English.—A judicial officer vested with authority to prevent breaches of the peace, jurisdiction in minor cases and power to commit for trial for more serious offenses. The origin of the office in England is dated from 1326 when, by a statute of Edward III (c. 16), certain persons in each county were "assigned to keep the peace." By a later statute (34 Edw. III, c. 1–1360) judicial powers were conferred; and from time to time their powers were extended not only as judicial officers but also as agencies of local administration, in the relief of the poor, the maintenance of highways, the imposition of parochial rates, and other local affairs. From the time of the Tudors the justices acted as the state's "man of all work" with a multifarious variety of powers and duties both judicial and administrative. Single justices acted as committing magistrates. In petty sessions of two or more they tried minor criminal cases, granted tavern licenses and regulated wages. The quarter sessions of the justices in each county acted as a higher court of criminal jurisdiction and as an administrative board for the county. With the creation of elected county councils in England in 1888, most of their administrative functions have been taken from the justices. Until recently justices of the peace in England were required to be property owners and were regularly chosen from the landed gentry, serving without compensation, and exercising a patriarchal or semifeudal authority in the rural districts.

Colonial.—Justices of the peace were early introduced in the American colonies. They were appointed by the governors and at first were vested, as in England, with both judicial and administrative powers. During the colonial period their administrative functions were for the most part transferred to elective officials.

State.—In the first state constitutions short terms of appointment for justices and selection by the legislature were introduced; and gradually popular election became the established method of selection. Property qualifications have disappeared. At the same time the collective judicial powers of justices have been lost, while in minor matters the jurisdiction of single justices has been extended to civil as well as criminal cases.

In Massachusetts, Maine and Rhode Island, justices of the peace are still appointed by the governors; and in these states the ordinary justices are little more than committing magistrates and have no judicial power. In Maryland, North and South Carolina and Alabama justices are also appointed; but in other states they are elected for short terms by towns, townships or county precincts. In criminal cases justices of the peace usually have summary jurisdiction to try petty misdemeanors and to commit those accused of felonies or other serious crimes for trial before a higher court. Jurisdiction in civil cases was first granted in regard to actions in contract; but now usually applies also to certain cases of tort. It does not apply to cases where title to real estate is involved nor to proceedings in equity; and is limited to cases involving not more than a fixed maximum, which varies from $100 to $300 in the several states. In Tennessee, however, their civil jurisdiction is more extensive, including some cases where as much as $1,000 is involved, and also some equity powers.

Justices of the peace also retain some administrative powers in a number of states. In Kentucky, Tennessee and Arkansas they constitute the county court (*see*) which acts as the administrative board for county affairs. Generally in the southern states, the justices are the chief public officials in the rural districts. In New York, Michigan and Illinois they act as members of the town boards.

References: C. A. Beard, *Office of Justice of the Peace in England* (1904); J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906).

JOHN A. FAIRLIE.

JUVENILE REFORMATORIES. See REFORMATORIES, JUVENILE.

K

KANSAS

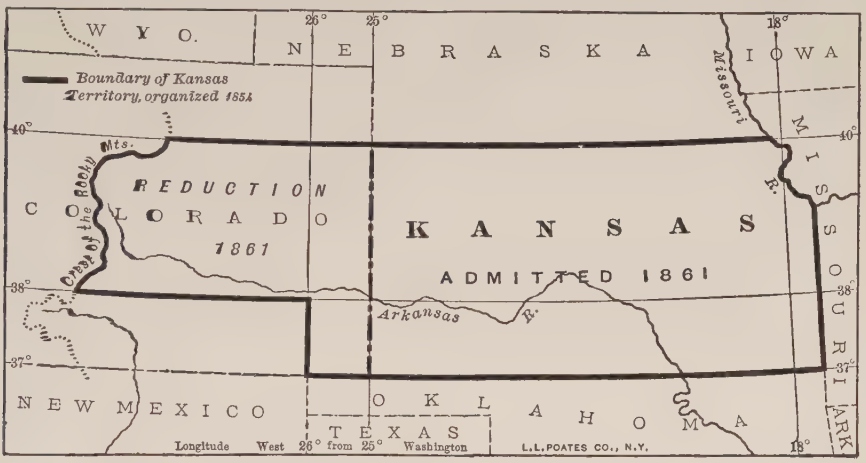
Early History.—The first white settlements in Kansas grew up around trading posts, Indian missions of various denominations, and the federal forts. By 1853 there were, in all, some 1400 whites, who, in that year, elected a delegate to Congress, Rev. Thomas Johnson. He was refused admission because there was as yet no territorial organization though a bill for such organization was then before the House committee on territories. Before another year was out the whole Kansas-Nebraska question was the chief topic in American politics (*see* KANSAS-NEBRASKA BILL). Between 1855 and 1858 three constitutions were drawn up in Kansas, at Topeka, Lecompton, and Leavenworth respectively and all failed of passage in Congress. The fourth constitution (the third free constitution) was adopted at Wyandotte (now Kansas City, Kansas) in July, 1859. It was consciously framed upon the Ohio model and was adopted by popular vote in October 1859. This constitution was finally accepted early in 1861, and on February 9, Governor Robinson and the officers elected under the constitution in the preceding December took charge of the civil government of Kansas.

Constitution.—The constitution of 1861, with comparatively few amendments, has remained the fundamental law down to the present time. Under it the usual provisions for governmental machinery were made. But it was unique among American state constitutions in providing that all bills were to originate in the lower house and the Senate had merely the opportunity of amendment or rejection. The suffrage was extended to white male citizens of the United States resident in the state six months, and to those of foreign birth who had declared intention. Corporations, banks, cities and villages were to be created under general law but a banking law required a referendum vote before going into effect. The homestead exemption provision was submitted to the people as a separate proposition and was carried easily. The more important amendments follow: 1864, bills to originate in either house; 1880, prohibition of the manufacture and sale of intoxicating liquors except for medicinal and scientific purposes; 1900, the supreme court increased from three to seven members; 1904, the governor given power to veto items of appropriation bills subject to repassage by two-thirds of legislature; 1912, women given the suffrage in state elections.

Prohibition.—Of all constitutional provisions probably the one declaring for state wide prohibition has most often been under fire. The law passed to enforce this provision was immediately attacked in the courts. In 1881 Justice Brewer decided that the law was constitutional and that under it probate judges could issue licenses to druggists. He declared further that the legislature could restrict such sale of liquor if it saw fit. Subsequently it passed a law regulating such sale. Notwithstanding this legislation the liquor traffic continued to thrive until the stringent statute of 1909, and its conscientious enforcement put an end to much of the traffic. That law declared that no person should make or sell liquor for any purpose whatsoever. At times there has seemed to be considerable sentiment for the resubmission of the prohibition amendment, first by one political party and then by another. Thus, in 1890 original package (*see*) shops were opened and the law set at defiance. Soon came the establishment of the Republican Resubmission League which, receiving no encouragement from the Republican governor, joined with the Democrats to nominate a state ticket. Ex-governor Robinson headed this ticket and polled 71,357 votes out of 280,000 in the subsequent election. In 1898 the Democratic platform demanded resubmission, and the Republican ticket received a substantial majority.

Political Parties.—In politics Kansas has, during most of its history, been a strong Republican state. Down to 1883 the state administrations and Kansas members of Congress were uniformly Republican. In that year G. W. Glick (Democrat) defeated St. John (Republican) for reëlection to the governorship The feeling against third term officers and St. John's stalwart stand for prohibition conspired to give Glick the victory though the other Republican candidates were elected. In 1885 the Republicans returned all their candidates and remained in complete control of the state until the Populist (see POPULIST PARTY) risings of 1890. Kansas, the center of the People's party movement, was willing to go all the way in testing the party and did so

from 1890 to 1898, except for the two years 1894–96 when the state swung back into Republican ranks. In 1890, though the Republicans captured all but one of the state offices, Kansas sent to Congress one Populist and four Fusion members besides electing a Populist legislature and consequently a Populist United States Senator. In 1892, the Populists again elected the entire state ticket, all the presidential electors, and six congressmen. Though defeated in the hard times' years, 1894, the Populist-Democratic fusion ticket was completely successful in 1896; Bryan electors were chosen, and a Populist, W. A. Harris, was sent to the United States Senate by a legislature in


W Y O.
N E B R A S K A
I O W A
Boundary of Kansas Territory, organized 1854
Missouri R.
REDUCTION
1861
C O L O R A D O
Mts.
Crest of the Rocky
K A N S A S
ADMITTED 1861
Arkansas R.
M I S S O U R I
N E W M E X I C O
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ARK
Longitude West 26° from 25° Washington
L.L.POATES CO., N.Y.

Boundaries of the State of Kansas, Showing Territorial Changes

which there were ninety Populists. In 1898 Kansas again became Republican, and remained so until 1912. In the election of 1912 the state gave 10 electoral votes to the Democrats, chose a Democratic governor, and sent 5 Democratic congressmen to Washington. Kansas is even more zealous now than it has been in the past in advancing reform movements, and the majority of the present political leaders are urging a closer relation between government and people.

Woman Suffrage.—As early as 1867 a constitutional amendment giving to women the right to vote was submitted to the people and defeated. In 1882 the Republican state convention asked for the submission of such an amendment but the legislature took no action. In 1887 the right to vote in all municipal and school district elections and on bond issues for school purposes was granted to women by state law. In 1895 another amendment giving women state-wide suffrage was submitted to popular vote and again it was defeated. In 1911 an amendment giving women state suffrage was referred by the legislature to the voters, and at the general election of 1912 the proposition carried.

Recent Legislation.—Recent years have seen the passage of two groups of laws, one of which attempts to further popular participation in the state government, the other devoted to the solution of economic questions. In 1907 commission government laws (amended in 1909) provided a method whereby cities of the first and second class might adopt the commission form (*see*). First class cities are entitled to non-partisan nominations, initiative (*see*) and referendum (*see*), the recall (*see*) and a merit system (*see*). No provision is made for the recall or the merit system in the second class cities, and second class cities under 10,000 population are not entitled to non-partisan nominations. Thirty-seven cities, including all of the larger cities of the state, are operating under the commission form with most satisfactory results. In 1908 a primary election law was passed which, together with the amendment of 1909, gave the power of nominating state and local officers, and United States senators, to the people (*see* Primaries, Direct). The law does not apply to school district elections or to those in second class cities under 10,000. Party committeemen, also, are nominated in the regular primaries. The legislature of 1911 made further provision for nominating United States Senators (*see*) by the Oregon (*see*) method, but the clause in the original law making a majority of districts necessary to such nomination was retained. Among other laws which failed to pass in 1911 was the resolution submitting an initiative and referendum amendment to the people for ratification. Both parties had pledged themselves to such a law but failed to come together on the proposition in the legislature. The legislature of 1913 also adjourned without agreeing on such a resolution. It will doubtless continue an issue in state politics until the people have opportunity to vote upon such an amendment.

An example of the second group of laws mentioned is the Bank Guarantee Law of 1909 which was declared constitutional by the

federal Supreme Court in 1911 (Assaria State Bank *vs.* Dolley, 219 *U. S.* 121). Under it any bank with a specified surplus may share in the guarantee fund by complying with the terms laid down. The legislature of 1911 made of the old Railroad Commission a Public Utilities Commission which is expected to regulate public utilities in general instead of confining itself to the transportation companies. This legislature also enacted the so-called "Blue Sky Law," the first legislation which attempts to guard investors against promoting schemes and hazardous stock enterprises.

Population.—Kansas has grown steadily in population since its admission. Its largest increase came in the decade 1870–80, and was no doubt partially due to the large influx of negroes in 1879. This "Negro Exodus," as it is called, was the result of the advice to go west given to southern negroes by a negro convention held in Nashville, May 7, 1879; 40,000 negroes, chiefly from Tennessee, Mississippi and Louisiana came to Kansas in that year. Many took farms under the Homestead Law. The numerical increase in population is as follows: 1860, 107,206; 1870, 364,399; 1880, 996,096; 1890, 1,427,096; 1900, 1,470,495; 1910, 1,690,949. Twenty-nine and two-tenths per cent of the total population for 1910 lived in cities of 2,500 or more; and 45.7 per cent in incorporated territory. The rate of increase between 1800 and 1900 in cities of 2,500 or more was 39 per cent; the rate outside of such cities was but 7.3 per cent.

See Commission System of City Government; Kansas-Nebraska Bill.

References: L. W. Spring, *Kansas* (1885); D. W. Wilder, *Annals of Kansas* (1886); F. W. Blackmar, *Charles Robinson* (1902); R. M. Perdue, "Sources of the Constitution of Kansas" in Kansas Hist. Soc., *Collections*, VII (1902); F. G. Bates "Commission Government in Kansas" in Am. Pol. Sci. Assoc., *Proceedings*, 1910; C. Becker, "Kansas" in *Essays in Am. History* by various authors and dedicated to F. J. Turner (1910).

Clarence Addison Dykstra.

KANSAS-NEBRASKA BILL. The Kansas-Nebraska Act, approved May 30, 1854, created two territorial governments in the region north of the 37th parallel, between Missouri and the Rocky Mountains. Although slavery had been excluded from this region under the Missouri Compromise, this Act declared that the Compromise of 1850 had established a new principle for the settlement of the question of slavery in future territories which "superseded" or was "inconsistent with" the earlier compromise. The latter was therefore declared "inoperative and void." The "true intent" of the Act was to leave the people of these territories free to legalize or to prohibit slavery, in accordance with the principle of "popular sovereignty" (*see*). The omission to state at what time the people might properly decide this question immediately precipitated the "Kansas Struggle" (*see*).

The appearance of this measure in 1854 took the North by surprise, for there it had been generally understood that the "final settlement" of 1850 did not apply to territory covered by the Missouri Compromise. By apparently opening new areas to slavery the Act stirred up a prolonged renewal of the slavery agitation, characterized throughout the North by bitter denunciations of the Act and its sponsor, Senator Stephen A. Douglas (*see*). Historians differ widely in explaining the genesis of this Act and Douglas's motives in championing it. In national politics, the Act hastened the dissolution of the Whig party, the disruption of the Democratic party and the formation of the Republican party, and "set in motion the train of political changes which led straight to Civil War."

See Compromise of 1850; Missouri Compromise; Non-Interference with Slavery; Slavery Controversy.

References: J. F. Rhodes, *Hist. of the U. S. from the Compromise of 1850* (1899), I, ch. v; H. E. von Holst, *Constitutional and Political Hist. of the U. S.* (1885), IV; P. O. Ray, *The Repeal of the Missouri Compromise* (1909).

P. Orman Ray.

KANSAS STRUGGLE. The Kansas struggle, 1854–1858, was a contest between pro-slavery and anti-slavery settlers, the latter assisted by northern emigrant aid societies, to determine whether Kansas should enter the Union with or without slavery. Armed bands from Missouri, by invading the territory, and illegally participating in elections, enabled the pro-slavery party to elect its delegate to Congress (November, 1854), and the first territorial legislature (March, 1855), which immediately enacted a drastic pro-slavery penal code. The anti-slavery party, denying the legality of this legislature, adopted the Topeka or "free-state" constitution, (December, 1855), elected "state" officers and a legislature (January, 1856), and memoralized Congress for admission as a free state (March, 1856). These rival governments existed for over two years, the pro-slavery government being recognized by the federal administration. Repeated collisions between armed bands led to the appointment of a congressional committee to investigate Kansas affairs (March, 1856), and the interposition of federal troops.

The Lecompton constitution (*see* Anti-Lecompton Democrats) establishing slavery as a permanent institution, was declared adopted (December 21, 1857) by the pro-slavery party which thereupon sought admission as a slave state. Meanwhile, the "free-state" party, augmented by new arrivals, captured the territorial legislature (October 5, 1857) and ordered the resubmission of the

entire Lecompton constitution. This resulted in its rejection (January 4, 1858), pro-slavery men not voting. This constitution was again, by order of Congress, resubmitted under the provisions of the English Bill, and again overwhelmingly rejected (August 2, 1858). Kansas now remained in the permanent control of the "free-state" party.

See KANSAS; KANSAS-NEBRASKA BILL; SLAVERY CONTROVERSY.

References: Special committee appointed to investigate the troubles in Kansas, "Report" in *House Reports*, 34 Cong., 1 Sess., II, No. 200 (1855); L. F. Spring, *Kansas* (1906); J. F. Rhodes, *Hist. of the U. S. from the Compromise of 1850* (1899), II, 45–302; F. H. Hodder, "Some Aspects of the English Bill for the Admission of Kansas," in Am. Historical Assoc. *Report*, 1906, I, 199–210; bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 226. P. ORMAN RAY.

KEARNEYISM. A term signifying the policy of driving out Chinese laborers by violent measures if necessary; the policy of a "working-man's" party in San Francisco during the Anti-Chinese agitation 1877–1880, led by Dennis Kearney, who continually reiterated to the crowds assembled on the "sand lots" the edict, "The Chinese must go." See CALIFORNIA; CHINESE IMMIGRATION AND EXCLUSION. O. C. H.

KEEWATIN. Keewatin is an administrative district of the Dominion of Canada (*see*), comprising the territory lying northward of the provinces of Ontario and Manitoba and westward of Hudson Bay. It has an area of 516,571 square miles, and a population of about 10,000, chiefly Esquimaux and half-breeds. It was organized as a district by an act of the Canadian Parliament in 1876, but has never been given a separate administration. The lieutenant-governor of the province of Manitoba is *ex officio* administrator of Keewatin. See CANADIAN PROVINCES. W. B. M.

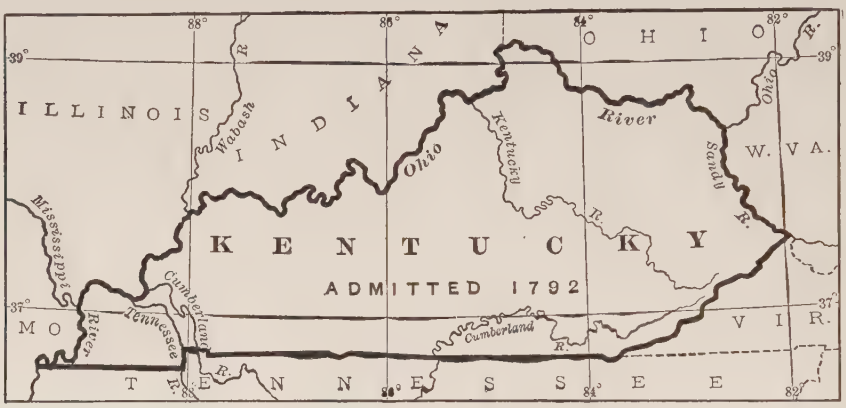
KELLY, JOHN. John Kelly (1821–1886) was born at New York City, April 21, 1821. He entered politics in 1854 as an alderman, and the same year was elected to Congress as a Democrat, retaining his seat until 1859, when he was elected sheriff of the city and county of New York. He became one of the leaders of Tammany Hall, and a bitter enemy of Tweed, and from 1865 to 1867 he was for a second time sheriff; the legitimate emoluments of the office during the two terms, were about $800,000. From 1868 to 1871 he travelled abroad; and then reorganized Tammany Hall, aided Tilden and others in the overthrow of the Tweed Ring, and made himself the Democratic boss of the city. From 1876 to 1879 he was city comptroller, and for a time supported Tilden. In 1879, by running as an independent candidate for governor, he brought about the election of Cornell, the Republican candidate. He died at New York City, June 1, 1886. As a boss he relied for support upon citizens who were satisfied with a respectable public service at any cost, and who approved of any party machine that was not openly dishonest. See BOSS AND BOSS SYSTEM OF PARTY ORGANIZATION. Reference: De A. S. Alexander, *Pol. Hist. of New York*, II, III (1906). W. MACD.

KENT, JAMES. James Kent (1763–1847) was born at Fredericksburgh, N. Y., July 31, 1763. In 1785 he was admitted to the bar, and began practice at Poughkeepsie. He was a Federalist member of the legislature in 1790 and 1792, but met defeat as a candidate for Congress in 1793. He had already attained eminence as a lawyer, and in 1793 removed to New York City, where for five years he was professor of law at Columbia. In 1796 he was appointed a master in chancery, at the same time representing New York City in the legislature; in 1797 he became recorder, and in 1798 a justice of the state supreme court. As a judge he devoted himself to the systematic exposition and development of law, at a time when American jurisprudence was yet in its infancy, and established the custom of full written opinions in important cases. In 1804 he became chief justice of the state supreme court, and in 1814 chancellor, retaining the latter office until his statutory retirement for age in 1823. He was a member of the constitutional convention of 1822. He died at New York City, December 12, 1847. Of his numerous law books, the best known is his *Commentaries on American Law* (N. Y., 4 vols. 1826–30; 14th ed. by J. M. Gould, Boston, 4 vols. 1896). See LAW, CONSTITUTIONAL, AMERICAN. References: W. Kent, *Memoirs and Letters of James Kent* (1898); C. Z. Lincoln, *Constitutional Hist. of N. Y.* (1906), I, II. W. MACD.

KENTUCKY

Early History.—The first attempt to establish a government in the Kentucky region was made by Richard Henderson and a body of land speculators known as the Transylvania Company. Under their direction, Daniel Boone cut his famous "Wilderness road" and built his fort at Boonesborough (April, 1775). In the interest of the propriety claims of the Transylvania Company which were menaced by popular discontent, a memorial was soon sent to the Continental Congress asking "that Transylvania be added to the number of the

United Colonies." The request was, however, rejected mainly through the efforts of Patrick Henry. The Kentucky settlers, under the leadership of George Rogers Clark, soon prevailed upon the Virginia Assembly to annul the claims of the Transylvania Company, and to establish the county of Kentucky which, on December 7, 1776, was reorganized as a political unit of the Virginia commonwealth with the right to be represented in the Virginia assembly. The boundaries of Kentucky county were much the same as those of the present state. (See TRANSYLVANIA).



BOUNDARIES OF THE STATE OF KENTUCKY

Soon after the Revolution, the Kentucky people were deep in the discussion of a plan for separating from Virginia and securing the admission of Kentucky into the Union. A representative assembly met December 27, 1784, and approved the plan, providing for a second convention to carry it into execution. Although Virginia readily gave her assent, it required eight additional conventions to complete the process; and Kentucky was not regularly admitted until June 1, 1792. The constitution, which was drafted by the last of these conventions (April 1792), was extremely democratic in character, providing few checks upon the popular will. It provided for manhood suffrage, then almost, if not wholly, unknown in political constitutions; but in strange contrast with this liberal suffrage, the choice of the state senate and the governor was not given to the voters directly, but through the medium of a college of electors.

Resolutions of 1798 and 1799.—In 1798, Kentucky felt herself called upon to issue a protest against the Alien and Sedition Acts (*see*) recently enacted by the Federal Government. The result was "The Kentucky Resolutions of 1798 and 1799," the original source from which the nullifiers of later date claimed to have drawn their dangerous doctrine (*see* VIRGINIA AND KENTUCKY RESOLUTIONS).

Second and Third Constitutions.—The indirect method of electing the governor and state senators provided in the first constitution was soon found to be distasteful, and, in July, 1799, a convention assembled to revise the constitution. The result of its work was a new constitution which provided for the election of the governor and lieutenant-governor and the senate by the direct vote of the people. This constitution went into operation on June 1, 1800, and remained unchanged until May 7, 1850, when a third constitution was adopted. The chief change secured by the third constitution, proclaimed June 11, 1850, was the abolition of life tenure of judges, clerks of courts, etc.

Present Constitution.—The present or fourth constitution of Kentucky was adopted in 1891. It provides for the three departments, legislative, executive, and judicial, each being expressly "confined to a separate body of magistracy." The legislative branch consists of a senate whose members are elected for four years, and a house of representatives chosen for two years. Senators must have attained the age of thirty years; representatives, twenty-four. Senators must have resided within the state for six years next preceding their election; representatives two years. Senators must have resided for one year next preceding their election in the district from which they are chosen; and representatives one year "in the county, town, or city" which they represent. The salaries of senators and representatives are fixed by law at five dollars for each day of actual legislative session, and fifteen cents a mile for necessary traveling expenses. These salaries may be changed by law, but no change may become effective during the session at which it is made. A legislative session may not continue for more than sixty days, Sundays and legal holidays not being counted.

The supreme executive power is vested in the "Governor of the Commonwealth of Kentucky," elected for four years by the qualified voters of the state, the highest number of votes being sufficient for election. He is ineligible for the four years immediately succeeding his

term of office. He must be at least thirty years of age, and must have been a citizen and a resident of Kentucky for at least six years next preceding his election. His compensation is "to be fixed by law" and at present is $6,500 per annum. His appointing power is surprisingly small, most of the offices which are generally left to the governor's appointment being filled by election. He has power to fill vacancies in all offices for the state at large, or for districts larger than a county; but the treasurer, auditor of public accounts, register of the land office, commissioner of agriculture, labor and statistics, secretary of state, attorney general, and superintendent of public instruction are elected by the qualified voters of the state at the same time the governor is elected, and for the same term of four years. Like the governor himself, they are ineligible for reëlection for the four years succeeding the term for which they were elected.

The judicial system of Kentucky is comparatively simple. (1) A court of appeals composed of seven judges elected for eight years and having appellate jurisdiction only. The senior judge of this court is chief justice of the state. (2) Circuit courts composed of judges elected for six years. Criminal cases are "under the exclusive jurisdiction of some one branch" of this court. (3) Each county in the state has a "county court" consisting of one judge commissioned by the governor. (4) Each county is subdivided into districts in each of which one justice of the peace is elected each fourth year.

There is a quarterly court established in each county (presided over by the county judge), for the trial of civil cases involving sums not exceeding $200. A police court may be established in each city or town in the state, with jurisdiction in cases of violation of municipal ordinances, etc., and with such criminal jurisdiction as justices of the peace enjoy. These courts further act as examining courts in felony cases. By a recent statute, each county court is also constituted a "juvenile court" with jurisdiction over neglected, dependent or delinquent children. The county judge presides over this court also.

Suffrage.—The suffrage is granted by the constitution to every male citizen of the United States, of the age of twenty-one years, who has resided in the state one year, and in the county six months, and in the precinct in which he offers to vote sixty days, next preceding the election, certain classes, such as insane, idiots, and criminals convicted of treason, felony, bribery, being excepted.

Local Option.—"The constitution provides for local option elections on the liquor question in counties, cities, towns, and precincts." The most interesting features of Kentucky politics during the last decade have grown out of the county unit as a means of resisting the political encroachment of liquor interests.

Political Affiliations.—In political affiliations Kentucky has generally followed the fortunes of the Democratic party. The first nine governors were members of Jefferson's Democratic-Republican party. The tenth (1828–1832) was a National Republican; her eleventh and twelfth were Democrats. All of her governors from 1836 to 1850 belonged to the Whig party of which the great Kentucky citizen, Henry Clay, was leader and founder. From 1850 to 1855 Kentucky was under Democratic administration. In 1855 Charles S. Morehead, a member of the new American party, was elected governor; but, since 1859, the governorship has been constantly in the hands of the Democrats with the exception of two terms—1895–1899 and 1907–1909—when Republicans held the office. In December, 1899, William S. Taylor, a Republican, was inaugerated governor of Kentucky, but his election was contested by his Democratic rival, William Goebel, who received the certificate of election.

Goebel was shot while the contest was in progress, and his lieutenant-governor, J. C. W. Beckham, served as governor for the remainder of the term, as well as for the term which followed, the constitutional provision prohibiting a governor of Kentucky to succeed himself having been construed to apply to two successive full terms and not to a full term succeeding part of a term.

With the exception of the election of 1789 when Kentucky was not a member of the Union and that of 1792 when there was no Democratic party, Kentucky cast her electoral vote for Democratic candidates in every election until 1824, when she sustained Clay, the Whig candidate; but in 1828 she again sustained the Democratic ticket. In the elections from 1832 to 1852 inclusive, her electoral votes were given to Whig candidates; but in 1856 she returned to the Democratic fold. In 1860, Kentucky sustained the Constitutional Union ticket in the vain hope of preventing Civil War; but since that contest her electoral votes have always been given to the Democratic candidates, with the single exception of the election of 1896 when twelve of the thirteen electoral votes of the state were given to the Republican candidate.

Population.—The population of the state in 1790 was 73,677; in 1820 it was 564,317; in 1860, it was 1,155,684; in 1900, it was 2,147,174; in 1910, it was 2,289,905.

See CONSTITUTIONS, STATE, AMENDMENT OF; CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: J. Filson, *Discovery, Settlement and Present State of Kentucky* (1784); N. S. Shaler, *Kentucky* (1885); J. M. Brown, *The Political Beginnings of Kentucky* (1889); H. Marshall, *The Hist. of Kentucky* (1812, 1824); M. Butler, *History of Kentucky* (2d ed., 1836); L. Collins, *The Hist. of Kentucky*

(1882); bibliography in R. M. McElroy, *Kentucky in the Nation's History* (1909); F. N. Thorpe, *Federal and State Constitutions* (1909), III, 1263–1358.

ROBERT MCNUTT MCELROY.

KID-GLOVE POLITICS. A term of derision applied by machine politicians to the methods of men of high rank with clean political principles and methods when they enter politics to overthrow the "practical" politicians.

O. C. H.

KINDERGARTEN. The introduction of the Froebellian kindergarten into America was due to Elizabeth Palmer Peabody, who, after studying the work in Germany, succeeded in establishing several, by private means, in Boston about 1868. The kindergarten as a part of the public school system in the United States is to be credited to Dr. W. T. Harris who as superintendent of schools in St. Louis, in 1873, established the first kindergarten as an integral part of the system. The experiment proved a success from the beginning. In the next year three more schools were added and the number has grown in St. Louis alone to considerably over one hundred.

The example of St. Louis was followed in other cities; but in most of them the kindergartens were maintained for a time entirely by private means, as for instance in Boston where Mrs. Quincy A. Shaw supported the entire free kindergarten system for eleven years until 1889, when the city adopted it.

In 1909, 536 cities in the United States, reported free public kindergartens with 173,911 pupils.

The attendance is voluntary. The teachers have special training and are a part of the regular teaching corps.

See EDUCATION, RECENT TENDENCIES IN; SCHOOLS, PRIMARY.

References: S. E. Blow, "Kindergarten Educ." in N. M. Butler, *Education in the U. S.* (1900), I, ch., ii; E. G. Dexter, *Hist. of Education in the U. S.* (1906); R. G. Boone, *Education in the U. S.* (1889). GEORGE E. FELLOWS.

KING CAN DO NO WRONG. A phrase, which according to Blackstone, indicates the absolute perfection attributed to the king in his political capacity. According to this fiction, for it was little else, whatever unlawful or unjust acts were done by the government were not imputable to the king, nor was he answerable therefor. Conversely the king's prerogative "extends not to do any injury: it is created for the benefit of the people, and therefore cannot be exerted to their prejudice." **Reference:** Wm. Blackstone, *Commentaries* (Cooley's ed., 1899), Bk. I, 246. H. M. B.

KING CAUCUS. **See** CAUCUS, LEGISLATIVE, FOR NOMINATIONS.

KING, RUFUS. Rufus King (1755–1827) was born at Scarborough, Maine, March 24, 1755. In 1780 he was admitted to the bar, and in 1783 was a member of the Massachusetts general court. From 1784 to 1786 he was a member of Congress, and in 1785 offered a resolution to exclude slavery from the Northwest Territory. In 1787 he was one of the Massachusetts delegates to the Federal Convention, and subsequently, as a member of the Massachusetts convention, contributed much to the ratification of the Constitution. In 1788 he gave up the practice of law, and engaged in business in New York City. From 1789 to 1796 he was a United States Senator from New York. He supported the Jay treaty, and, in connection with Hamilton, published a series of letters in defence of it, over the signature of *Camillus*. In 1796 he resigned his seat in the Senate to become minister to England, a post which he retained until 1803. He was the Federalist candidate for Vice-President in 1804 and 1808, receiving on the first occasion 14 electoral votes, and on the second 47. From 1813 to 1825 he was again a member of the Senate. In 1816 the Federalists nominated him for President, and he received 34 electoral votes. He died at New York City, April 29, 1827. **See** GREAT BRITAIN, DIPLOMATIC RELATIONS WITH. **References:** C. R. King, *Life and Correspondence of Rufus King* (1894–1900); De A. S. Alexander, *Pol. Hist. of N. Y.*, I (1906). W. MACD.

KING'S PROVINCE. In 1664–5 royal commissioners came to Rhode Island to investigate conflicting land claims, especially in the Narragansett country claimed by Massachusetts and Connecticut. The commissioners named this territory "King's Province" and delegated jurisdiction to the governor, deputy governor and assistants of Rhode Island. A commission was appointed in 1685 to govern Massachusetts, New Hampshire, Maine and King's Province, with Joseph Dudley as president. He visited the province, settled disputes, and established an efficient government. Soon after, the territory was incorporated with that of Rhode Island (*see*). **References:** S. G. Arnold, *Hist. of State of Rhode Island* (1859), I; Mass. Hist. Soc., *Collections, First Series* (reprinted, 1835), V, 246–248; Rhode Island *Colonial Records* (1857), II, 93–94; Connecticut *Public Records* (1895), II, 526–541. M. W. J.

KITCHEN CABINET. The coterie of politicians and personal friends from whom President Jackson (*see*) sought advice on important public questions rather than from the members of the official cabinet. **See** CABINET OF THE PRESIDENT. O. C. H.

KNAPP, MARTIN AUGUSTINE. Martin A. Knapp (1843–) was born at Spafford, N. Y., November 6, 1843. In 1869 he was ad-

mitted to the bar, and from 1877 to 1883 was corporation counsel for Syracuse. In 1891 he was appointed a member of the Interstate Commerce Commission, was reappointed in 1897 and 1902, and was chairman from 1898. In 1911, on the organization of the Commerce Court created by the act of June 18, 1910, he was made the presiding judge, which office he held until the abolition of the court in 1913. See INTERSTATE COMMERCE COMMISSION. Reference: Interstate Commerce Commission, *Annual Reports*, 1891–1910. W. MacD.

KNIFING. A term applied to the underhand antagonism of a regular party man against the nominee of his party whom, for the sake of regularity, he ostensibly supports. The term appeared in the New York *Nation* as early as 1888. O. C. H.

KNIGHTS OF THE GOLDEN CIRCLE. This was a secret political and semi-military order during the Civil War. It was first organized in 1854 by Dr. George L. Bickley of Cincinnati and was intended to engage in filibustering (*see*). At the outbreak of the Civil War, it became an advocate of the southern cause. It was especially strong in Missouri, Illinois, Indiana, and Ohio but lodges were reported in Michigan, Iowa, New Jersey, Maryland, Pennsylvania, and California. Both sides estimated it approximately as follows: 40,000 in Ohio, 120,000 in Indiana, 125,000 in Illinois, 100,000 in Missouri, 20,000 in Michigan, besides numbers in other states. Probably the membership never totaled one-fourth of these estimates. Local disorder was often attributed to the lodges. Numerous grand jury investigations influenced the leaders to dissolve the order in 1863. It was superseded by the "Order of American Knights," which, with a larger membership, gave more attention to military organization but was not more effective than the older order. In 1864 the society was given the name of the "Order of the Sons of Liberty" and Clement L. Vallandigham (*see*) became "grand commander." The only general movement which gave any promise of success was the so-called "Northwest Conspiracy of 1864"—an effort to establish a northwest confederacy to foster a revolution. Negotiations were carried on with Confederate agents in Canada; the plan, however, utterly failed. The leaders were arrested; six of them were sentenced to be hanged; seven to life imprisonment; others received shorter terms. The order was lacking in leadership; the majority of the members probably considered the lodges to be little more than Democratic clubs and had no intention of armed opposition. It was at no time a real menace. References: W. D. Foulke, *Life of Oliver P. Morton* (1899); *House Executive Docs.*, 39 Cong., 2 Sess., No. 50 (1866–7), case of George St. Leger Grenfell; B. Pitman, Ed., *The Trials for Treason at Indianapolis, Disclosing the Plans for Establishing a Northwestern Confederacy* (1865), the official record of the trials. M. F.

KNOW-NOTHING PARTY. A name popularly applied to the American party (*see*). Secret societies based upon opposition to Roman Catholics and naturalized aliens as voters and office-holders appeared in New York soon after 1840. The most important of these societies, the Order of the Star-Spangled Banner, was founded in 1850; but its existence did not become generally known until 1853. As the members, when interrogated, professed ignorance of the purposes or organization of the society, they were dubbed "Know-Nothings." The influence of the order was shown in municipal elections in New York and Philadelphia in 1854, in local outbreaks against Roman Catholics, and in the appearance of similar organizations in Massachusetts, Connecticut, New Jersey, Maryland, and Ohio. In June, 1854, a general convention of the order, attended by delegates from thirteen states, met at New York City, organized as a grand council, and adopted a constitution and ritual. The break-up of the old political parties after the passage of the Kansas-Nebraska Act contributed greatly to Know-Nothing success, and in the state elections of 1854 the party vote, especially in Massachusetts, New York, and Pennsylvania, was of national significance. See AMERICAN PARTY; A. P. A. PARTY. Reference: L. D. Scisco, *Political Nativism in New York State* (1901), chs. iii–vi.

W. MacD.

KNOX, PHILANDER CHASE. Philander C. Knox (1853–) was born at Brownsville, Pa., May 6, 1853. In 1875 he was admitted to the bar, and began practice at Pittsburg. In 1876 he was appointed assistant United States district attorney for the western district of Pennsylvania. He resigned the office in 1877 to engage in private practice, and became prominent as a corporation lawyer. In 1901 he was appointed Attorney General of the United States, and held the office until June, 1904, when he was elected a United States Senator from Pennsylvania. In 1909 he became Secretary of State in the cabinet of President Taft which office he held till 1913. In 1910 he submitted to the great powers proposals for the extension of the jurisdiction of the international prize court at The Hague; but his proposed neutralization of railways in Manchuria, in the interest of peace between Russia and China, though approved by Germany, was rejected by Great Britain, France, Russia, and Japan. References: E. F. Baldwin, "President Taft's Cabinet" in *Outlook*, XCI (1909), 691–702; W. E. Clark, "How Knox became Secretary of State" in *World's Work*, XVII (1909), 11433–11434.

W. MacD.

KOSSUTH EPISODE. Louis Kossuth, Hungarian patriot, by his speech of March 3, 1848, roused the Magyars to political revolution in Hungary; Hungarian independence was proclaimed April 14, and Kossuth was made dictator. Russia sent troops at the request of Emperor Francis Joseph. The Magyars were subdued, and the leaders fled to Turkey, where, under agreement, they were detained one year. The people of the United States sympathized with Kossuth, and while desiring to avoid intervention in European affairs, the Government requested Turkey to make no further agreements, and offered a warship to bring Kossuth and his companions to the United States. With the consent of the Sultan they embarked September 10, 1851, on a journey marked by revolutionary demonstrations at the ports of call in the Mediterranean, particularly at Marseilles. Not allowed to pass through France, Kossuth sailed from Gibraltar *via* England and arrived in New York, December 4, 1851. He was later received by the Senate and House and shown distinguished consideration. Kossuth manifested marked dissatisfaction that the United States did not take aggressive action in behalf of the cause for which he labored, but sober second thought had convinced the authorities and people that their offer of hospitality to political refugees might lead to undesirable European complications. The attitude of the United States towards the Hungarian revolution was the subject of a protest by the Austrian chargé (*see* HUELSEMANN EPISODE). See AUSTRIA-HUNGARY, DIPLOMATIC RELATIONS WITH; INTERVENTION; NEUTRALITY, PRINCIPLES OF. References: L. Kossuth, *Memoirs of my Exile* (1880); J. B. Moore, *Digest of Int. Law* (1906), VI, 905; J. D. Richardson, *Messages and Papers* (1896), V, 119; J. F. Rhodes, *Hist. of the U. S.* (1899), I, 205 *et seq.*

G. G. W.

KOSZTA INCIDENT. Martin Koszta, a Hungarian, after the revolutionary movement of 1848–49 sought refuge in Turkey and subsequently came to the United States. Here on July 31, 1852, he declared in regular manner his intention to become a citizen of the United States. After about two years residence in America he went to Smyrna, where the American diplomatic representative granted him a *tezkereh*, a kind of safe-conduct. Later he was seized, by men suspected of being employed by the Austrian consulate, thrown overboard in the harbor and taken on board the Austrian war vessel *Huszar*. The American representative demanded Koszta's release: when it was not granted, aid was requested from the American sloop-of-war *St. Louis* whose commander threatened to use force to secure Koszta. To avoid conflict, Koszta was turned over to the French consul and later was allowed to return to the United States. Secretary Marcy stated that: "This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm foundation of justice."

In the case of Simon Tousig, an Austrian by birth, in 1854, Secretary Marcy stated that the United States protection would not be granted since "Tousig voluntarily returned to Austria and placed himself within the reach of her municipal laws." This differentiated Tousig's case from Koszta's, as Koszta was within Turkish jurisdiction when seized. A United States law of 1907 recognizes the principle of protection in allowing the Secretary of State at his discretion to issue passports limited to six months to persons who have declared their intention to become citizens of the United States. These are not good in the state of prior allegiance.

See AUSTRIA-HUNGARY, DIPLOMATIC RELATIONS WITH; CENTRALIZATION; DECLARATION OF INTENTION TO BE NATURALIZED; PROTECTION TO AMERICAN CITIZENS ABROAD.

References: J. B. Moore, *Digest of Int. Law* (1906), III, 820–854; W. E. Hall, *Int. Law* (1909), 238; J. F. Rhodes, *Hist. of the U. S.* I (1899), 416; *House Exec. Docs.*, 33 Cong., 1 Sess., II, No. 91 (1854).

GEORGE G. WILSON.

KU KLUX KLAN. The Ku Klux Klan was one of the secret revolutionary organizations of southern whites, whose objects were to oppose what the founders believed to be the chief objects of the congressional plan of reconstruction. The name of this organization was also applied in popular usage to all of the secret political orders existing in the South from 1865 to 1877, some of which were known locally as the Pale Faces, the Knights of the White Camelia, the Invisible Empire, the Order of the White Rose, and the Constitutional Union Guards. For the origins of these bodies one must go back to the ante-bellum period when southern society, resting upon negro slavery, was organized on a semi-military basis. The Ku Klux Klan (the name was a deliberate corruption of the Greek word for circle) began in Tennessee as a young men's fun-making club, and its methods were found to be so well adapted to the work in hand—that of frightening the negroes into order and good behavior—that it very quickly became a body of regulators. Other orders began in a similar way and soon all were known under the general term—Ku Klux Klan. The movement started in 1865 and it began to disappear in 1866 as order was gradually restored, but the inauguration of the reconstruction legislation in 1867–1868 resulted in the revival of the movement on a larger and more serious scale. The causes of this widespread Ku Klux Klan movement were many: the disorder resulting from the war; the desire to repress the negroes now strongly organized into the secret political organization called the Union

League; to make the negro work better; to keep him from voting; and to terrify or drive out the "carpet-baggers" (*see*) and "scalawags" (*see*) who were held responsible for the bad government in the South.

It was the novel methods used that gave to the secret orders their peculiar character and their effectiveness. At first they only frightened the negroes by playing upon their superstitions and for a year or two this was successful. Later the klansmen frequently resorted to whipping and sometimes to shooting or hanging. As a rule, however, the mere warning to the negroes by the disguised band was sufficient.

As the reconstruction governments fell, the secret orders gradually ceased operations, and by 1874 they were confined to communities like Louisiana still under control of the reconstruction government where they became an open insurrectionary body called the White League.

The Ku Klux Klan and other orders, which were generally supported by public opinion in the South, were influential in restoring order after the Civil War, in preventing negro outbreaks during the transition period between slavery and freedom, in restraining the excesses of the carpet-bag negro government and in shaping the revolutionary movement which finally restored the southern communities to the control of the whites. Their lawless practices, however, resulted in a weakened respect for the law and its administration, the effects of which were felt in the South for a generation after the orders were disbanded.

See RECONSTRUCTION.

References: J. C. Lester and D. L. Wilson, *Ku Klux Klan* (1905); W. L. Fleming, *Civil War and Reconstruction in Alabama* (1905), *Documentary History of Reconstruction* (1907), II; Don, *Civil War and Reconstruction in Florida* (1913). WALTER F. FLEMING.

L

LABOR, ALIEN. Many states have laws limiting employment on public work by citizens. Such laws have been generally held to be a violation of the Fourteenth Amendment to the Federal Constitution. A New York law which prohibited the use of stone on public works, except that dressed within the state, was held unconstitutional as an interference with interstate commerce. The federal law prohibiting the importation of alien contract labor (*see*) has been upheld and enforced. See ALIEN; IMMIGRATION; LABOR AND WAGES, THEORY OF; LABOR CONTRACTS; LABOR, PROTECTION TO; PAUPER LABOR. References: B. Brandenburg, *Imported Americans* (1904); John Mitchell, "Protect the Workmen" in Immigration Restriction League, *Publication No. 53* (1909); H. L. Summer, *Labor Problems* (1905), 68–112; E. G. Balch, *Our Slavic Fellow-Citizens* (1910); J. R. Commons, *Races and Immigrants in America* (1907), 135–159; J. W. Jenks and W. J. Lauck, *Immigration Problem* (1912), 182–196; P. F. Hall, *Immigration* (1906), 121–138; I. A. Hourwich, *Econ. Aspects of Immigration* (1911), *Immigration and Labor* (1912); F. J. Warne, *The Immigrant Invasion* (1913); U. S. Immigration Commission, *Reports;* Commissioner General of Immigration, *Annual Reports.* C. F. G.

LABOR AND WAGES, THEORY OF. Low Wages and Distribution of Laborers.—It is an old observation that when two men are looking for one job wages are low, but when two jobs are looking for one man wages are high. This observation, while correct beyond the possibility of question, does not explain why there are not always jobs enough to go around. Another observation which may throw some light upon this question is, that at the very time when in certain places or in certain kinds of work there are not jobs enough to go around, in other places and in other kinds of work there are not men enough of the right kind and quality to go around and fill the jobs. This is particularly true in the case of independent business men who are needed to start the new enterprises which would give employment to the men now out of employment.

This means, of course, a bad distribution of men. At a given time and place the distribution of men, or rather of talents and capacities, does not conform to the distribution of jobs, or of opportunities for work. This makes it inevitable that those men who are of a kind to outnumber the jobs for which they are fitted shall be poorly paid, whereas those men who are not numerous enough for the jobs for which they are fitted shall be highly paid. The only cure for this situation is to redistribute the men, or, rather, talents among men; that is to say, to train more men to fill those occupations for which men are scarce. That will leave fewer men to fill those occupations where men are over-abundant and, at the same time, it will create more jobs for them. If the number of men who know how to start and run new productive enterprises could be doubled, there would be more such enterprises started. This would increase the demand for the lower grades of skill.

Reason, Physical rather than Economic.—It is a physical rather than an economic fact that a man must be poorly paid, if there happen to be two men to fill every vacancy in the kind of work for which he is fitted. His actual physical productivity is very low when there are not enough for the other kinds of labor or the other factors of production to combine with him. This may be illustrated by the case of gunpowder, which requires for its manufacture three ingredients: charcoal, sulphur, and saltpetre, in fairly definite proportions. If there should be more charcoal than will combine properly with the existing supply of saltpetre, then each unit of charcoal must command a low price (assuming that there are no other uses to which it can be put). Under these circumstances, an additional unit of charcoal would add very little to the production of gunpowder; or the loss of a unit of charcoal would subtract very little from that production. On the other hand, under the same conditions, the addition of a unit of saltpetre would add considerably to the production of gunpowder, and the loss of a unit would subtract considerably from that production. Under these conditions, it would be inevitable that the manufacturers of gunpowder should offer good prices for saltpetre and low prices for charcoal. The difficulty is not with the law of value, but with the distribution of ingredients.

Similarly, if there are several kinds of labor required for the production of a given article, and there should happen to be more of one kind of labor than could be combined satisfactorily with the existing supply of some other kind, the same result would follow. A few more laborers of the one kind would be like an addition to the supply of charcoal in the

above illustration. That is, they would add very little to the total product, or a few less would subtract very little; whereas a few more laborers, say managers, of the scarce kind would be like an addition to the supply of saltpetre. That is, they would add a great deal to, and a few less would subtract a great deal from, the product. It would be inevitable that the former should be poorly paid, and the latter well paid. Here, again, the difficulty is not with the law of value, but with the physical distribution of men.

It would, of course, require a miracle to transform charcoal into saltpetre. Yet if such a miracle could be performed, it would tend to equalize the value of the two ingredients. It does not take a miracle to transform an unskilled worker whose class may be superabundant into a skilled worker or a skilled manager whose class may be scarce. This could be done in a good many individual cases, by superior educational opportunities; and if it were done the situation would be relieved. There is no other relief which goes to the root of the matter. All others merely cover up symptoms rather than serve to eradicate causes.

Labor and Capital.—Carry this principal a step farther. For efficient production, it is not only necessary that there should be several different kinds of contemporary labor combined in the same industry, but that there should be a combination of present and past labor—past labor accumulated in the form of tools, buildings, and equipment. There must also be the proper proportion here, otherwise there is a bad distribution. If there is too much present labor to combine well with the existing accumulation of tools and equipment, then the former will command a low price and the latter a high price.

Furthermore, land is also necessary as one of the ingredients in every industrial enterprise; and there must be a proper proportion not only between different kinds of contemporary labor, and between present labor and tools, but between labor and tools on the one hand, and land on the other. Otherwise, there is, again, a bad distribution of the factors of production, which leads necessarily to a bad distribution of incomes. To attempt to cure the bad distribution of incomes without relieving first the disproportion among the factors of production is, again, to treat symptoms rather than causes.

The law of supply and demand, which everywhere governs value, is thus seen to be something more than a mere formula. It rests upon a law of proportions among complementary goods and coöperating factors of production. The law of wages is governed by the physical laws which govern the values of all productive agents.

See COST, ECONOMIC; PRICE, ECONOMIC THEORY OF; SUPPLY AND DEMAND; WAGES.

References: T. N. Carver, *The Distribution of Wealth* (1904), chs. i, iv; F. W. Taussig, *Principles of Economics* (1911), ch. xliv; J. B. Clark, *The Distribution of Wealth* (1889); A. Marshall, *Principles of Economics* (6th ed., 1910), V; P. H. Wicksteed, *The Common Sense of Pol. Econ., Including a Study of the Human Basis of Economic Law* (1910).

T. N. CARVER.

LABOR BUREAUS. Establishment.—The need of accurate information as a basis for legislation regarding the relations of employers and employees has led many American states to establish bureaus of labor and labor statistics. The first bureau was established in Massachusetts in 1869, for the purpose of investigating the conditions of the working classes. Other states have followed, until in 1913 there were 41 state and territorial bureaus besides the federal bureau, established in 1884. The French Government in 1891, established the first permanent labor bureau in any foreign country; 16 other countries have followed. The American bureaus were created largely as a result of the efforts of organized labor, supplemented by those of business men whose interests demanded accurate information as to labor conditions, and by those interested in social and economic questions.

Functions.—The functions of a labor bureau include: (1) assistance in ameliorating such conditions of the working classes as demand immediate relief, by thorough investigations which shall result in a body of information complete enough to be a basis for the formation of intelligent public opinion, or of securing the enactment of the wisest provisions for relief; (2) keeping a record of the conditions of labor in the state; (3) informing the public of the results of investigations undertaken by other agencies and the sources of information on labor questions.

The duties of some American bureaus are extended to cover other departments of state activity in relation to labor such as: the administration of labor laws; the prevention and settlement of labor disputes; administration of free public employment offices; administration of workmen's compensation laws; and in general, all matters affecting the relations between employers and employees. The tendency of American legislation, with respect to labor bureaus, appears to be towards the establishment of separate bureaus for the consideration of specific phases of state activity in labor relations, and provision for governmental machinery which shall bring these bureaus into coöperation and also avoid duplication of effort.

In many states these bureaus are the general statistical offices of the state and as such are unable to devote their entire time and efforts to the investigation and study of the conditions of employment.

Administration.—The heads of such bureaus, generally known as commissioners, are usually appointed by the governor, although in six states they are elected by popular vote. The terms of office vary from two to four years. The retention in office of men with the greatest possible degree of experience in this work is essential to the best results. To properly and successfully prosecute the work of collecting statistics of labor, requires experience, administrative ability, and a wide knowledge of the social and economic condition of the working classes of a particular state on the part of the commissioner, a trained staff of assistants, and ample means to gather and compile the data. Men trained in practical statistical methods and economic work have not always been appointed to take charge of these offices, the appointing powers often holding the position as a reward for political assistance. In nearly all of the states there is a noticeable lack of adequate financial means to carry on extensive statistical inquiries. Statistical information may be obtained by correspondence, or by personal investigation by special agents. The first method is the one in most common use, owing to the small expense of collecting information in that manner; but the negligence or unwillingness of those to whom inquiries are sent, even when they are fully understood, produces more or less incomplete results. Many bureaus have conducted investigations of material assistance to the legislatures and the people in considering and enacting proper laws for the protection of labor interests; but on the whole, they do not afford such direct assistance in legislation as is needed.

See Labor Organizations.

References: *Am. Labor Legislation Rev., 1911*, I, No. 2, 123–134, No. 3, 59–68, No. 4, 61–104; L. D. Clark, *Law of the Employment of Labor* (1911), 211, 212; *Am. Year Book, 1910*, 444, 448, *ibid, 1911*, 198, *ibid, 1912*, 155.

C. F. Gettemy.

LABOR, CHILD. See Child Labor.

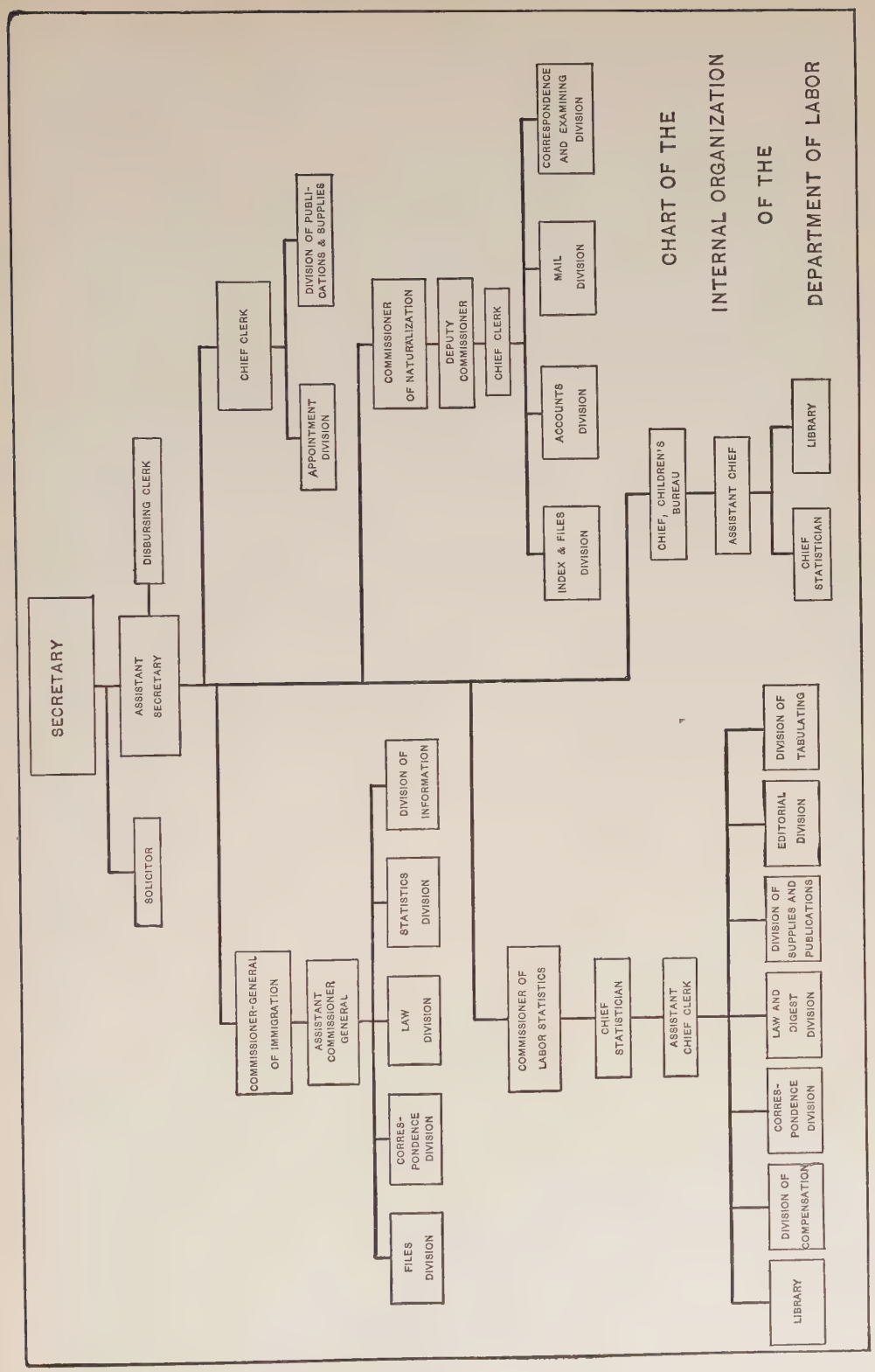
LABOR CONTRACTS. The right to compel the labor of another person, even when not involving chastisement, confinement or violent punishment, is so akin to slavery that it is nearly obsolete in modern countries. In England it was so early discredited that it is difficult to say how old is the principle of the common law against involuntary servitude, or the construction by the judiciary of the ordinary labor contract. Leaving out the cases of apprentices, soldiers and sailors, exceptions as old as the rule, the principle was well established by the time of the Statutes of Laborers, (1349 to 1379) when the last effort was made to enforce labor by statute. As to agricultural labor, we find, in 1377, the last statute concerning villeinage; in 1388 Wat Tyler led a rising for agricultural free labor; and the last mention of villeinage in the Statutes of the Realm appears in 1574. Even the court of chancery had to respect the common law in this particular and would not enforce labor contracts by specific performance, nor enjoin the servant from leaving the master's service; although if under contract he may be enjoined from working for any one else, at least in special cases where pecuniary damages would not be adequate, as, for example, the engagement of a star actor, or when the employee under contract has knowledge of the trade secrets of his employer. Thus Mary Clark entered into an indenture in 1816, whereby she agreed to serve as housemaid for twenty years; in 1821 her attorney brought a writ of habeas corpus and the court found that she was in a state of involuntary servitude, despite the contract, and she was accordingly discharged from the master's custody. The matter of the performance of the labor contract by associations or large bodies of men is treated elsewhere (*see* Injunctions in Labor Disputes). Sailors and mariners have been always, and may be still, compelled to a performance of their contract of employment for its term, if reasonable, or for the voyage for which they have shipped; but the obligation may not be indefinite so as to carry them anywhere in the world, or of indefinite duration, as to serve until the ship return from foreign parts. Soldiers are held guilty of a crime if they refuse duty or evade the service required of them by the state, or which they have voluntarily contracted to give. Ordinarily, however, the employee who ceases to work or refuses to carry out his contract is liable only for civil damages (*see* Strikes). Attempts to hold laborers, both white and colored, by declaring breach of contract to be a crime punishable by fine or imprisonment and then turning the laborer back to his master, have been held by the Supreme Court of the United States to be contrary to the federal statute against peonage, passed under the Thirteenth Amendment.

See Contracting Out of Labor Laws; Labor, Protection to; Peonage; Slavery.

References: Lumley *vs.* Wagner, 1 *De G. W. T.* 504; May Clark case, 1 *Blackford, Ind.* 122.

Frederic J. Stimson.

LABOR, DEPARTMENT OF. Organization. The Department of Labor was established by act of Congress approved March 4, 1913, "to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." Three bureaus formerly incorporated in the Department of Commerce and Labor (*see*), the Bureaus of Labor, Immigration and Naturalization, and the Children's Bureau, were transferred to the new Department. The act made no modification in their functions, but made


SECRETARY
ASSISTANT SECRETARY
SOLICITOR
DISBURSING CLERK
CHIEF CLERK
APPOINTMENT DIVISION
DIVISION OF PUBLICATIONS & SUPPLIES
COMMISSIONER OF NATURALIZATION
DEPUTY COMMISSIONER
CHIEF CLERK
CORRESPONDENCE AND EXAMINING DIVISION
MAIL DIVISION
ACCOUNTS DIVISION
INDEX & FILES DIVISION
CHIEF, CHILDREN'S BUREAU
ASSISTANT CHIEF
LIBRARY
CHIEF STATISTICIAN
COMMISSIONER-GENERAL OF IMMIGRATION
ASSISTANT COMMISSIONER GENERAL
DIVISION OF INFORMATION
STATISTICS DIVISION
LAW DIVISION
CORRESPONDENCE DIVISION
FILES DIVISION
COMMISSIONER OF LABOR STATISTICS
CHIEF STATISTICIAN
ASSISTANT CHIEF CLERK
DIVISION OF TABULATING
EDITORIAL DIVISION
DIVISION OF SUPPLIES AND PUBLICATIONS
LAW AND DIGEST DIVISION
CORRESPONDENCE DIVISION
DIVISION OF COMPENSATION
LIBRARY
CHART OF THE INTERNAL ORGANIZATION OF THE DEPARTMENT OF LABOR

a number of alterations in the titles of the bureaus and their heads. The name of the Bureau of Labor was changed to Bureau of Labor Statistics, and the designation of the Commissioner of Labor was similarly altered. The Division of Naturalization in the Bureau of Immigration and Naturalization was made a separate bureau, and the titles of Chief and Assistant Chief of the Division of Naturalization were changed to Commissioner and Deputy Commissioner of Naturalization. The Department of Labor, therefore, is made up of four bureaus. At its head is a secretary, who ranks last among the members of the President's Cabinet. There is also an Assistant Secretary.

Bureau of Labor Statistics.—The Commissioner of Labor Statistics investigates the causes and facts relating to such controversies and disputes between employers and employees as may interfere with the welfare of the people of the several states. He publishes, bimonthly, a bulletin showing the condition of labor in this country and in foreign lands; he reports statistical details relating to Hawaiian labor, especially in respect to industrial, social, educational, and sanitary matters; and he supervises the payment of compensation to certain employees of the Government for injuries sustained while at work (*see* under LABOR). This bureau has been an important influence in connection with the investigation of sanitary conditions in meat-packing establishment (*see* MEAT INSPECTION) and in mines (*see* MINES and MINING).

Bureau of Immigration.—The Commissioner General of Immigration (*see* IMMIGRATION), through local officials of the bureau, executes the laws relative to immigration and the exclusion of Chinese. The Chief of the Division of Information distributes to arriving aliens intelligence regarding desirable places of settlement.

Bureau of Naturalization.—The Commissioner of Naturalization (*see* NATURALIZATION) supervises the work of the clerks of the 3,500 United States courts in matters relating to naturalization, and annually receives, for filing, about 400,000 naturalization papers.

Children's Bureau.—The Chief of the Children's Bureau is charged with the investigation of all matters pertaining to the welfare of children and child life, especially the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents, diseases of children, employment, and legislation affecting children in the several states and territories; and with the publication of the results of these investigations.

See COMMERCE AND LABOR, DEPARTMENT OF; bureaus by name.

References: Secretary of Commerce and Labor, *Annual Reports* (1903–1912); Secretary of Labor, *Annual Reports*.

FRANCIS G. WICKWARE.

LABOR DISPUTES, INJUNCTION IN. See INJUNCTIONS IN LABOR DISPUTES.

LABOR, DIVISION OF. See DIVISION OF LABOR.

LABOR, FREEDOM OF. Constitutional Principles.—The liberty guaranteed from infringement save under due process of law (*see* FOURTEENTH AMENDMENT; LIBERTY, LEGAL SIGNIFICANCE OF) involves the right to labor for compensation, just as the guaranty of property rights involves the right to contract with reference to labor (*see* CONTRACT, FREEDOM OF). But under their general police power the states have authority to regulate employments which affect the public health and also those involving the health and safety of the persons engaged in them. The question whether such legislation unreasonably and therefore unduly interferes with the right to labor is one depending for solution on various considerations of public policy not easily enumerated. The reasonableness of the classification of employments may be considered by the courts; on the other hand the legislature is necessarily vested with a large discretion to determine, not only what the interests of the public require, but what measures are necessary to protect such interests. The legislature may not, however, under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusually and unnecessary restrictions upon lawful occupations.

Regulation of Professions and Callings.—Some callings are regarded as public in their nature to such extent that the duties and liabilities of those engaged in them may be regulated by law regardless of contract (*see* COMMERCE, GOVERNMENTAL CONTROL OF; PRICES AND CHARGES, REGULATION OF); and such regulations necessarily restrict, to some extent, freedom of labor as well as freedom of contract. Other callings, such as those of physicians, pharmacists, dentists, plumbers, etc., involve in their exercise considerations of public health, and the state may impose restrictions as to the qualifications of the persons engaging in them without violating the guarantees as to liberty. The right to practice law may be regulated on the grounds that the courts exercise a governmental function. Beyond these special reasons for securing competency in particular callings it is doubtful whether the state can prescribe special qualifications and fitness in particular fields of labor.

Hours of Labor.—In a considerable number of states statutes have been passed, prescribing the maximum number of hours out of the twenty-four during which employees may be allowed to labor in specified callings which are peculiarly confining or unwholesome and therefore likely to affect the health of those employed. The constitutionality of these statutes has been frequently attacked, but they have been usually

upheld where the classification of employments as peculiarly dangerous or unwholesome is reasonable (*see* EQUALITY BEFORE THE LAW). Such regulations have been sustained as to workers in mines, mills and bakeries. The list of occupations in this class or others which must necessarily be carried on under conditions such as reasonably to necessitate some restriction on the length of time of continuous employment in the interest of the health of the workman, could, no doubt, be considerably enlarged. The merely social or economic advantage of a restriction to an eight hour or ten hour day of continuous labor for the laborer, however, has not been deemed sufficient justification for an interference with his liberty to seek employment under such arrangements as he may see fit to make.

Special Legislation as to Women and Children.—The argument for general restriction of hours of continuous employment of women and children is more cogent in view of their physical disabilities, and restrictions of hours of labor and the nature of employments in which women may engage have been sustained which would probably not have been sustained if made equally applicable to men. There is considerable legislation as to the hours and methods of employment of children which has generally been sustained as reasonable.

Labor on Municipal Works.—On different grounds from any of those above referred to, legislation has regulated the hours of employment of laborers in public service, the basis for such legislation being the necessary and essential power of the legislature to regulate the public business. Thus it may be required that contractors on public works shall not employ their laborers beyond a specified number of consecutive hours except in cases of emergency.

Objectionable Employments.—An occupation which is against public policy may be altogether prohibited; and one which is peculiarly liable to abuse may be subjected to strict regulations. Thus, the businesses of gambling or carrying on a gambling place, that of prostitution or conducting a house of prostitution, and that of selling lottery tickets, are usually prohibited; while the business of manufacturing or selling intoxicating liquors is in some states entirely prohibited, in others, is subject to very stringent regulations.

Federal Regulations.—As the Federal Government can exercise the police power only so far as it is incident to powers expressly conferred, it can not enact general regulations of labor applicable to the entire country, save within the scope of those employments over which it has been given express or implied control. But it may and does regulate employment in interstate commerce and on the public works of the United States. To what extent it may by exercising the authority to exclude articles from interstate commerce practically control the employment of child labor in mills and factories remains an open question.

See CHILD LABOR; CONTRACT, FREEDOM OF; POLICE POWER; and under LABOR.

References: E. Freund, *Police Power* (1904), ch. xiii; H. C. Black, *American Constitutional Law* (3d ed., 1910), 415–422; Muller *vs.* Oregon (1908), 208 *U. S.* 412; Lochner *vs.* New York (1905) 198 *U. S.* 45.

EMLIN MCCLAIN.

LABOR, HOURS OF. The regulation of hours of labor by statute in the American states is generally limited to establishing the number of hours constituting a day's work; to limiting the working hours in certain employments, such as mines, tunnels, railroads, street railways, drug stores, bakeries; in public employments; and on public work; and the absolute restriction of the hours of labor of women and children. Federal laws have also been enacted regulating the working hours of employees engaged in interstate commerce.

Women and Children.—The constitutionality of laws regulating the hours of labor of children has never been questioned, since it is acknowledged that the state is charged with the duty of protecting those who are unable to protect themselves. Eight hours is the maximum day's work in some states, although a more common limit is 9 or 10 hours, reaching as high as 11 in North Carolina. The matter of night work of women as well as of children may also be regulated, the range prohibited varying from 6 p. m. to 7 a. m., to less favorable limits such as from 10 p. m. to 6 a. m. The limitation of the hours of labor of women has been held unconstitutional in a few instances on the ground of interference with the right of contract. In most courts, including the United States Supreme Court, however, laws restricting the number of daily working hours for women have been upheld as being within the police power of the state, as health regulations and as necessary for the welfare of the race. The minimum wage law enacted in Oregon in 1913 makes provision for the limitation of hours of labor of women and minors as well as for the establishment of a minimum wage by a state department, the Minimum Wage Commission.

Working Day.—No serious question has ever been raised as to the constitutionality of laws passed by many states fixing the length of the legal working day, in the absence of special contract between employer and employee. The federal and state laws limiting the hours of laborers and mechanics employed by the government or by private contractors doing public work, usually to eight a day, are now considered constitutional in view of the decision of the United States Supreme Court in the case of Atkin *vs.* Kansas (191 *U. S.* 207), in which it was held that the state has a right to prescribe the conditions under which its own

work shall be performed. The limitation of the hours of railroad employees, usually to 10 a day, and provisions for periods of continuous intermediate rest, usually of 8 hours, constitute a valid exercise of the police power and hence are justifiable even though interfering with the freedom of contract. Such laws are not only of benefit to the employees but are conducive to the public safety. The statutory regulation of hours of street railway employees is valid, since public corporations are created by and are therefore subject to legislative control; and further because such laws regulate the use of a public franchise and provide for the safety of the public by protecting the employees from excessive strain.

Health and Safety.—The question as to whether the state can regulate the hours of labor in private industries for the purpose of protecting the health and safety of adult workers in these occupations has not been definitely established. The constitutionality of such legislation has been attacked upon the grounds of class legislation and denial of freedom of contract. The New York supreme court by a majority of one, upheld a state statute limiting the hours of labor in bakeries to 10 a day and 60 a week; while the Supreme Court of the United States by a like majority in Lochner *vs.* New York (198 *U. S.* 45) declared the law a violation of the Federal Constitution as interfering with the freedom of contract (Art. I, Sec. x, ¶ 1). These two decisions are interesting in that they illustrate the difference of view between the courts and the members composing them as to what is and what is not a proper exercise of the police power in behalf of the public welfare. In contrast with these decisions of 1904–5 is that of State *vs.* J. J. Newman Lumber Co. (50 *So. Rep.* 923), decided in December, 1912, by the Supreme Court of Mississippi, in which the court upheld a state law limiting the hours of labor of men.

The Future.—The reduction in hours of labor will doubtless continue as a thing desirable in itself, not only through efforts of organized labor and sympathetic reformers, but by economic pressure. Mechanical invention is constantly increasing the speed of working, which involves more constant and concentrated attention and makes greater demands upon the brain; and as the demands increase, the time during which they can be fully satisfied without exhaustion, diminishes. When there is no change of intensity, however, as in ordinary unskilled labor, reduced time may mean diminished efficiency.

See CHILD LABOR; WAGES; WAGES, REGULATION OF; and under LABOR.

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LABOR LAWS, CONTRACTING OUT OF. See CONTRACTING OUT OF LABOR LAWS.

LABOR ORGANIZATIONS

Origin and History.—Labor organizations exist to promote the distinctive class of interests of the wage-earner. Before the nineteenth century there was no distinct wage-earning class. In many industries it did not emerge until the century was well advanced.

As soon as a wage-earning class arose, special organizations were formed to promote its peculiar interests. Earliest were organized local trade societies composed of the workmen of a given craft in a single city. These were the prototypes of the modern local trade unions. The first of these appeared about the end of the eighteenth century. In 1827, at Philadelphia, was effected a federation—the first on record—upon the representative principle. All the trade societies existing in that city were combined in a central "trades union," later known as the "trades assembly." Until the last few decades the "trades assemblies" far over-shadowed in importance the national trade unions, which are composed of all the local unions of a given craft scattered throughout the country. Today such local federations are most commonly referred to as "city centrals," but they play a much less important rôle in the labor movement than formerly.

National Trade Unions.—The first of the national trade unions was organized as early as 1836; but the earliest still existent is the typographical union, which was organized in 1850. Less than a dozen of the national trade unions now existing, approximately 300, were formed before 1860.

The pioneer federation of all labor organizations existing throughout the country was the

short-lived National Trades' Union of 1834–1837. The second great national labor organization was the National Labor Union of 1866–1872. In 1868 it claimed 600,000 members. The next national organization of equal importance was the Order of the Knights of Labor, formed in 1869 and at its height in the eighties, when its membership reached 700,000.

The great national labor organization of today is the American Federation of Labor, whose unpretentious beginning dates back to 1881. Sept. 30, 1912, the membership of its affiliated unions was 1,841,268. The number of organized workmen not affiliated is less than 500,000. In all of the previous great national labor organizations the control rested with the constituent city centrals and local unions; in the American Federation of Labor the national trade unions have always been predominant. It has, consequently, been less highly centralized, and has made it a principle to regard the complete autonomy of each national union in determining all matters relating to its craft.

Policies of the Early Labor Organizations.—The policies of all of the early labor organizations were extremely fluctuating. Most of them grew out of strike movements in times of rising prices, when strikes usually succeed. As for preserving the fruits of victories won in strikes, the early labor organizations found themselves helpless. This difficulty was increased after the tide of prosperity had turned, and a period of falling prices set in. The organizations then invariably took up some panacea designed completely to supplant the wage system. The most popular suggestion was coöperation, for through coöperative production the wage-earners expected to become their own employers. Few of the coöperative ventures thus promoted were successful, and frequently the financially successful coöperative concern became the worst of wage-cutters. The greatest difficulty with the attempt of wage-earners to become their own employers was their lack of capital, and it is one reason why organized labor so enthusiastically took up the greenback movement (*see*) during the later sixties.

Another panacea espoused by some of the early labor organizations was that of "land reform." During the forties they did much to create public sentiment for homestead legislation. In the eighties the single tax program of Henry George found many adherents among the organized wage-earners. Socialism, on the other hand, at that time, made but slow progress among American workmen. Only in times of depression did the Socialists make any converts from the ranks of the labor organizations.

Early Difficulties.—To carry out their plans of reform, the early labor organizations, as has been the practice of their successors, invariably went into politics. During times when strikes are successful, politics are only incidental; but when strikes fail, politics become all important. The wage-earner's control of the government is felt to be the only way of giving a start to the reform principles. The conversion of labor organizations into political clubs, however, always led to their disruption within a short time. Not until the beginning of the next period of prosperity, after 1886, did new labor organizations appear, and they in their turn went through the same cycle as their predecessors.

It is just beginning to be understood why the early labor organizations were so short-lived and so unstable in their policies. A fundamental obstacle was the fact that the manufacturer did not control the market; he sold his products to the wholesale jobber, and could not, therefore, readily shift upon the consumer the wage increases which labor organizations had secured from him. Hence there was no possibility of the maintenance of lasting peace through trade agreements between the labor organization and employers.

It was, therefore, the jobber, not the manufacturer, against whom the early labor organizations had to struggle, and relief from that oppression could be won only through panaceas supported by influence in politics. Again, the jobber oppressed not only the wage-earners but the farmers and the small employers. Hence the early labor organizations were prone to coöperate with the farmers and with general "reform" movements. Their point of view was rather that of men expecting to become small employers than that of wage-earners.

Aims of the Present-day Organizations.—The American Federation of Labor has never espoused the policy of panaceas, and has regularly treated politics as of incidental importance. In the early nineties the Populists captured the Knights of Labor, but they were rebuffed by the American Federation of Labor. In the decade after 1900 the Socialists made many converts among the trade-unionists; but up to 1913 constituted only a minority of the members of the Federation.

The explanation for this fundamental difference in the policies of the American Federation of Labor and those of the organizations which preceded it lies in the changes which have taken place in industrial conditions. The wholesale jobber has in most industries lost control of the market to the manufacturer; and it is now comparatively easy for employers to shift wage increases upon the consumers. In consequence, direct trade agreements between employers and labor unions became possible, and have become general since the depression of 1893–97. To-day, they are the *raison d'être* of unionism. All trade-union policies and practices grow out of this fundamental aim of unionism—collective bargaining. This is why organized labor always insists upon "recognition of the union," and why most unions demand the "closed shop." The "open shop"

is believed to undermine the trade agreement system, and is, therefore, determinedly fought by organized labor.

The early unions found it impossible to secure lasting benefits for labor through economic pressure brought to bear upon employers. Every gain made was soon lost. Experience did, indeed, seem to prove the correctness of the theory of the classical economists that labor organizations could not interfere with the operation of the law of supply and demand.

Because of the changed industrial conditions, the present-day unions have been able completely to shatter this theory. Beyond all question they have succeeded in raising the wages and bettering the conditions of their members. In no other country is the difference in wages between the organized and the unorganized so great as in the United States. Even after the crises of 1893 and 1907 the well established unions practically held their own. The trade agreement system has proven satisfactory not only to organized labor but to many employers as well. In the industries in which collective bargaining is most firmly established strikes are least frequent and least bitter.

Out of these experiences the more intellectual of the labor leaders have developed something of a trade union philosophy. Its starting-point is acceptance of the existing wage-system. The effort to sweep away the wage-system looks too far into the future. Immediate improvements in the lot of the wage-earners must be secured, and can best be won through substituting collective for individual bargaining. Still, only when the employer has reason to fear the strength of the trade unions, can collective bargaining be maintained. Unionism has, therefore, become a business proposition. Its appeal to the wage-earners is that it can secure immediate benefits for them.

Structural Changes.—This business point of view has been reflected in the structural changes which the labor organizations have undergone in the last decade. The early unions had low dues and no reserve funds. The national unions and the general officers had little power. Constant changes were made in the union officials. Union dues are now much higher, and some unions have accumulated large reserve funds. Most unions have established insurance benefits for their members, which tend to keep them loyal. Very marked, also, has been, the tendency toward centralization of power in the national union and in the general officers. The union officials, moreover, have been less frequently changed.

With these structural changes labor organizations have attained a degree of stability and of responsibility which the early unions lacked. Violations of trade agreements have become comparatively rare. Nor have there been frequent changes in union policies during the last two decades. The aim which the unions affiliated with the American Federation of Labor, have never lost sight of, has been to place their organization in a better position to fight employers through strikes and boycotts, should these become necessary to maintain collective bargaining.

Change in Point of View.—Little sentimentalism appears in the American Federation of Labor. The violent denunciation of employers which had become commonplace, seldom appears in the present day trade union journals. Nor has the Federation cared much about the sentiment of "workingmen of the world unite." The strong unions have made slight sacrifices to aid the weak organizations. The skilled have kept aloof as long as possible from the unskilled. The leveling effect of the perfection of machinery, has forced an ever increasing number of unions to admit the unskilled to membership; but this is due to practical necessity, not to recognition of the brotherhood of all wage-earners.

The business unionism of today is more class conscious than were the early labor organizations. Their aim was to raise the wage-earner into the position of an employer, to grow out of the wage-earner class into that of small employers. The present-day labor organizations accept the wage-earning class as permanent but hope to better its lot. This is why organized labor no longer advocates productive coöperation, and why, in recent decades, so little understanding has existed between organized labor and "reform" and farmers' movements. Never before, have the labor unions been so free of all "intellectual" leadership. Perhaps they are developing a distinct wage-earners' ethical code; but organized labor, at all hazards, depends less upon the favor of public opinion than ever before.

Services of the Labor Organization.—The primary mission of trade unionism is to overcome through collective bargaining the advantage which the employer enjoys over the employee in the making of a wage-contract, because the employer seldom needs the workman as urgently as the workman needs a job.

Another purpose of trade unionism, at least for the organizations of the more highly skilled, is to drive up wages through restricting the supply of labor. A few unions have been very successful in such a policy. Effective restriction of the supply of labor, however, is not possible in the many occupations requiring little or no skill.

The trade unions have done much for the wage-earners, by demanding labor legislation. The state federations of labor have been particularly aggressive in this field.

Another service of the labor organizations has been to act as schools of citizenship for the adult immigrants, who are seldom reached by any other American institution. The trade unions admit a large part of them and help them in their amalgamation. Most unions try to get all such members to become natural-

ized American citizens. The unions bring together men of all races and creeds, and when an immigrant joins a union, he generally gets away from the baneful control of the immigrant banker and of the ward politician.

The labor organizations justly lay claim, also, to having been the pioneers in demanding many democratic reforms of interest to other classes as well as to the wage-earners. The earliest labor organizations agitated for the establishment of a free and universal school system. In the forties organized labor was the champion of homestead legislation. In the early eighties it demanded the initiative the referendum and the recall. It was among the earliest advocates, also, of railroad rate regulation, of anti-trust legislation, and of the municipal ownership of public utilities.

Revolutionary Labor Organizations.—Recently the public has become aware that the American Federation of Labor has a rival in the Industrial Workers of the World. Its history dates back to 1898. In that year the Western Federation of Miners organized the Western Labor Union, which aimed to keep the American Federation of Labor out of the Rocky Mountain country. In 1902 its name was changed to the American Labor Union, to indicate that it now meant to carry the fight against conservative unionism into every part of the country. Its present name of Industrial Workers of the World was adopted in 1905, to place stress upon its championship of industrial unionism as opposed to craft unionism, which is the basis of the American Federation of Labor.

It is clear that the spirit which dominates this new organization is different from the business unionism of the American Federation. The Industrial Workers of the World denounce all restrictive policies designed to preserve to skilled laborers special advantages not enjoyed by other wage-earners and proclaims the ideal "one big union" to embrace all workingmen. When this "big union" shall have been realized "capitalism" is to fall. In the meantime, every opportunity must be taken advantage of to arouse the class-consciousness of the wage-earners. Strikes should be as frequent as possible; workingmen should be encouraged to practice their class-consciousness daily, by secretly ruining their employer's product or crippling his machinery; trade agreements should never be made with employers, or if made should not be considered as binding. Even the accumulation of reserve funds by unions is condemned as tending to make them conservative.

Estimates as to the spread of this revolutionary philosophy are uncertain. In 1912 the membership of the Industrial Workers of the World is probably not one-twentieth as large as that of the American Federation of Labor, notwithstanding the withdrawal from it of the Western Federation of Miners. It has gained ground particularly among recent immigrants and among the unskilled laborers, as was shown in the successful strike at Lawrence, Massachusetts, in 1912.

Within the American Federation of Labor itself has developed a growing radical minority, composed mainly of Socialists. Their criticism is that the Federation "hob nobs" with the enemies of labor, and has become a tool of the old party politicians. Their aim is to make the trade unions the active propogandists of the Socialist movement. With the Industrial Workers of the World, however, the Socialists within the Federation have no more sympathy than has the conservative majority.

The reason for all the discontent with the business unionism of the American Federation of Labor, is the slow progress which the trade unions made during the decade from 1900 to 1910. In many industries the unions face today, not competing employers, but a single trust. Against the trusts the unions have hitherto been unable to make headway. Trade unionism has been practically driven out of the trust industries, and also out of industries controlled by militant employers' associations. Up to 1900 all employers' associations formed to fight the trade unions, in the course of time came to bargain with them. This is not true of the recent employers' associations, which have not only fought the unions, but have worsted them. Hence the demand for a change in tactics.

Excesses of Labor Unions.—Organizations so broad and so powerful in the nature of things are subject to some malign influences. The first principle of the labor union is to bring into the organization, by persuasion or by policy, all the men of the trade. The advantage of collective bargaining is much reduced if even a small number of workmen stay out of the unions and are available in case of a strike; hence the wide use of picketing (*see* BOYCOTTS) and violence against non-union men when a strike is on. Against employers who refuse to recognize the principle of the closed shop, labor unions occasionally resort to organized terrorism, which takes the form primarily of ruthless destruction of property of employers of non-union labor but does not hesitate at the murder of non-union workmen or their protectors. For the promotion of such campaigns of violence, officials of two important unions have been brought to trial. Moyer, Haywood and Pettibone, leaders of the Western Federation of Miners, were indicted for projecting and procuring the commission of a long series of dynamite outrages on the property of mine operators in the western states, employing non-union miners, which culminated in the murder by a bomb of ex-Governor Steunenberg of Idaho, who had been active in suppressing violence in his state. Haywood was brought to trial in 1907 but was acquitted and his two

associates were freed. In 1911 the two brothers McNamara, one of them secretary of the International Association of Bridge and Structural Iron Workers, were convicted on their own confession of dynamiting two buildings erected by the members of the National Erectors' Association, an organization of employers pledged to an open-shop policy. From this conviction resulted the indictment by a federal grand jury in 1912 of 54 officers, members of the executive board and agents of the International Association of Bridge and Structural Iron Workers as abettors and agents of a conspiracy which had resulted in the dynamiting of upwards of a hundred structures. After a trial at Indianapolis which lasted three months, 38 of the defendants were found guilty on Dec. 28, 1912, on all counts. Six were released on suspended sentences, and the others were sentenced to imprisonment for terms varying from one to seven years.

See Business, Relation of Government to; Corporation Charters; Labor and Wages, Theory of; Labor, Hours of; Labor Parties; Labor, Relation of the State to; Socialism; Trade Unions; Trusts.

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LABOR ORGANIZATIONS ENCOURAGED BY STATUTE. Many American states have recognized the fact, that, in view of the limitation of protective labor legislation by the doctrines of freedom of contract and class legislation in the Constitution (Art. I, Sec. x, ¶ 1), certain reforms can be brought about only through the organization of wage-earners; and consequently have enacted legislation tending to encourage and foster trade unions.

The incorporation of labor organizations is permitted and even encouraged by the statutes of many states and the United States, although the unions, for the most part, prefer the freedom of unincorporated bodies from regulation and inspection. Incorporated unions have the power to sue and be sued; they are legally and financially liable to the extent of their funds for their corporate acts and proceedings; but laws governing corporate action usually are made inapplicable to unions by special provisos, as exemption from the operation of anti-trust acts, directed against combinations of employers in restraint of trade; relief from insurance laws; exclusion from the federal law for the taxation of corporations. Such laws are discriminatory in favor of labor organizations and certain courts have broadly hinted at their unconstitutionality, although the Nebraska supreme court declared constitutional the exemption from the provisions of an anti-trust law.

The union label is protected in many states, and the word "trade-mark" is often so defined as to include the union label. Penalties of fines or imprisonment, or both, are imposed for counterfeiting it. The right to wear the badge of a labor organization or to carry a union card is restricted to actual members by the statutes of a number of states, although in Montana such an act has been declared unconstitutional.

The Federal Government and several states have passed laws declaring it unlawful for employers to discharge workmen for joining labor organizations, or to make it a condition of employment that they shall not belong to labor organizations. This type of statute has been declared unconstitutional as interfering with the rights of all men voluntarily contracting to make or continue their contracts in accordance with their own choice, so long as nothing injurious to the public interest is involved.

Massachusetts, in 1911, followed the example of England and made it legal for a union to impose fines upon its members.

See Labor, Freedom of; Labor, Protection to; Labor, Relation of the State to.

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LABOR PARTIES

Early Movements.—Labor movements in American politics began as early as 1828 and 1830. These were organizations and agitations among workingmen made with a view to influencing legislation. A Workingmen's Party held a state convention in Syracuse, N. Y., in 1830 and nominated Ezekiel Williams for governor. He received 3,000 votes in the state. In New York City the party fused with the Whigs and elected a few members of the legislature. It demanded equal rights for women, the abolition of chattel slavery and of "wage-

slavery," and the abolition of all special privileges. It maintained an independent existence but a short time, merging with the Loco Foco movement (*see*) which, in its beginnings, stood for democratic equality and against monopolies and special privilege.

At the same time there were independent labor movements in other states, notably in Pennsylvania. Conventions of laboring men urged upon their fellow workers reasons for separating themselves from their political parties. They complained that the laws were unjust to the laboring classes; that workingmen were without representation; and that the masses were suffering abuses from the great, the rich, and the powerful. These labor political protestants opposed all chartered monopolies as infringements on the rights of the people; they denounced lotteries as injurious to the morals and interests of the people; and they demanded free schools for the early and suitable education of the children of the poor, denouncing the "charity schools," whose bounty carried with it only opprobrium and disgrace, since in them the poor man's children could receive education only by being publicly recognized as "paupers." This local labor party movement was instrumental in promoting the cause of free schools in Pennsylvania—a cause in which Thaddeus Stevens (*see*) became a most distinguished and successful advocate.

United and consecutive efforts to organize among labor men a political party in the modern sense began many years later. A labor congress met in Baltimore, Aug. 20, 1866, which was described in its own address as "the first National Labor Congress ever convened in the United States." There were in this Baltimore congress sixty delegates from a majority of the states, who had met for the purpose of effecting a permanent organization of the wealth-producing classes and to devise the best means of promoting the interests of workingmen. It was recommended that steps be taken to form a National Labor Party "which shall be put into operation as soon as possible." The congress issued an address to the workingmen of America reviewing the condition of labor, and urging the "absolute necessity of cutting aloof from the ties and trammels of parties manipulated in the interest of capital." The legislation of the past, the address asserted, had always been the legislation of capital, of the propertied classes, who, when their interests were in the least endangered, always sundered party ties and stood shoulder to shoulder in defense of their own class welfare. The "one grand cause of all our evils . . . is the robbery which capital perpetrates on labor through legislation." Laboring men should cut loose from the trammels of party and unite to control legislation.

Another labor congress was held in Chicago in August, 1867. At this congress, the National Labor Union was organized and political independence was further urged. A declaration of principles was put forth, reaffirming the principles of the Declaration of Independence and adherence to democracy. At this labor congress was set forth probably the first public declaration, by a convention, of the money policy with which the Greenback Labor party (*see*) was subsequently identified, denouncing the national bank currency and calling for "the issue of treasury notes to be a legal tender for all debts public and private, and convertible at the option of the holder into government bonds bearing a just rate of interest." The "National Labor Union" also opposed land monopoly and held that the public domain should be widely distributed among the people. It submitted to its constituents the question whether a National Labor ticket should be placed before the people at the next presidential election. A committee in the next congress held in New York in September, 1868, urged an immediate organization of a separate political party. There was pronounced opposition to having such action taken that year as the presidential campaign was well under way and the country was greatly aroused on the issues of war and reconstruction. But in the convention of the "National Labor Union," which met at Philadelphia in 1869, a platform of "The Labor Reform Party" was put forth. This affirmed opposition to the banks' control of the currency and repeated the former demand for a legal tender greenback currency, and declared that the bondholders should be paid in this "lawful currency."

National Labor Reform.—From these congresses and from local movements in the states, especially among the trades unions, came the National Labor Reform Party, which held its first and only presidential nominating convention at Columbus, Ohio, February 21–22, 1872. There were representatives from seventeen states. The platform was essentially the same on labor and money as that announced by the National Labor Union in 1867 and 1868, with the addition of articles in favor of one term in the presidency, of revising the tariff so that "duties would rest mainly on articles of luxury," and demanding that money for future wars "should be collected from the wealth of the country and not entailed as a burden upon posterity." Judge David Davis, of Illinois, and Judge Joel Parker, of New Jersey, men of eminent ability and influence, were nominated for President and Vice-President. Parker declined the nomination. Judge Davis gave a qualified acceptance, but after the Liberal Republicans (*see*) and Democrats nominated another candidate he also declined, since he had consented to the use of his name by the Liberal Republicans (*see*) "having regarded that movement," as he said, "as the initiation of a policy to unite the various political elements in a compact opposition." The party again came together and nominated Charles O'Conor, of

New York, for President, who was also nominated by the "Straight Democrats," who were dissatisfied with the Democratic endorsement of Greeley and the Liberal Republican platform in that year. O'Conor received about 30,000 votes and with the close of the campaign of 1872 the National Labor Reform Party, like the Liberal Republicans, disappeared from the political arena, its members merging into the old parties or into new reform movements.

Local Labor Parties 1870–1880.— In the decade of depression and hard times from 1870 to 1880, several local workingmen's parties were organized in various parts of the country. One was organized in Illinois in 1874 which reached a membership of 2,000. The Socialist Labor Party cast 7,000 votes in Chicago in 1877. Similar independent labor tickets were quite largely supported in Cincinnati, Cleveland, and other western cities. These Socialist labor organizations, that were going into politics and using the ballot to control legislation, were a manifestation of Socialist opposition to the foreign control of the International Workingmen's Association (*see*) and may be described as a rival Socialist party in opposition to the German Marxian Socialists who had control of the International. A like defection from the International occurred in New York where the Social Democratic Workingmen's Party of North America was formed, on July 4, 1874. The purpose of this party was declared to be to establish a free state founded upon labor; to abolish the present unjust social and political conditions; to discontinue all class privileges; to introduce coöperative labor instead of the wage system in order to make the laborer independent of the capitalist; and, to these ends, to unite all workingmen.

Socialist Labor.—The next year (1877) the party changed its name to the Socialist Labor Party of North America, and under that name it has continued to the present time persistently advocating, from the Socialist point of view, the interest of labor and the political independence of the laborer, though it did not come into the political field with a presidential ticket until 1892, when it cast 21,164 votes for Simon Wing, of Massachusetts, for President.

Workingmen's Party in California.—In 1877 a workingmen's party was formed in California, (*see*) the leading spirit of which was Dennis Kearney, a labor agitator of great energy and power of harangue. Monster meetings were held on the "Sand Lots" and the agitation became the absorbing topic of the day. The party carried San Francisco in the city election, and in 1879 it exercised a controlling influence in the formation of a new constitution for California, and succeeded in inserting provisions in that instrument designed to curb the powers of corporate capital and to abolish Chinese contract labor.

Local Labor Parties after 1880.—In the years following 1880 still more numerous local and state labor parties were organized. In 1878, the Greenback Party, under the influence of leaders of organized labor, changed its name to the Greenback Labor Party (*see*). In 1886, a United Labor Party was organized in Chicago under the leadership of the Central Labor Union. In the same year, in Wisconsin, a Union Labor Party was organized, while in other states there were other bodies known as the Industrial Labor Party, Labor Reform Party, or merely Labor Party. These parties were made up of members of the American Federation of Labor, Knights of Labor, radical Socialists, Greenbackers, and even of some anarchists, and they engaged the old parties in spirited contests in local elections. The most important of these local labor contests in the politics of this period was in New York City in 1886, when the United Labor Party of that city, nominated Henry George for mayor of New York, and cast for him 68,000 votes. The Single Taxers and the Socialists united in this vote, the Socialists supporting the George candidacy in spite of his land tax theory as a hopeful movement against capitalism. But since these heterogeneous elements were unable to see alike as to economic theory and the cause of social distress, they were not subsequently able to walk together in political activity.

In 1887, the United Labor Party of New York State, nominated Henry George for Secretary of State, repudiating Socialism, and virtually disclaiming Socialists as fellow members. The Socialist Labor members, combining with other radical labor organizations formed in New York the Progressive Labor Party, nominating John Swinton to run against Henry George. The Progressive Labor party vote, of about 5000 was virtually confined to New York City.

National Labor Parties.—These labor parties, prior to 1888, were either local and transient movements or they were labor and Socialist organizations for agitation, education, and propaganda. None of them, except the National Labor Reform Party and Greenback Labor Party, had come into the field of national politics like a real American political party to place before the voters candidates for President and Vice-President. But in 1888 two regular political labor parties appeared in the field of presidential politics, namely: (1) the Union Labor Party, which was formed by a union of the Greenback Labor Party (*see*), largely rural in its constituency, with the urban trades union movement, which had been demanding labor and industrial reforms; and (2) the United Labor Party (*see*), a much smaller party, which under leadership of the Reverend Father Edward McGlynn, of New York, demanded the recognition of the principle of the single tax (*see*) and the abolition of private property in land. These parties disappeared after the campaign of 1888.

Conclusions.—The record of these labor parties tends to show that the American workingmen have never in any considerable numbers, cut loose from their party ties nor voted with any approach to solidarity. They have been usually divided from habit or convictions, between the Democratic and Republican parties. The leaders of the present Socialist party are now attempting to unite them into a "class-conscious party" against capitalism. It has been difficult to maintain an independent labor party movement in America. Party ties have been rigid; the skillful managers of the old parties have had well in hand the vast machinery of primaries and conventions, and no labor party in America has arisen at all comparable to the Labor party of England.

See DEMOCRATIC PARTY; REPUBLICAN PARTY; SOCIALISM; SOCIALISM, MUNICIPAL.

References: M. Hillquit, *Hist. of Socialism in the U. S.* (1903); J. R. Commons, U. B. Phillips and others, *Documentary Hist. of Am. Industrial Soc.* (1910), V, see index; T. H. McKee, *National Conventions and Platforms* (1901). JAMES A. WOODBURN.

LABOR, PAUPER. See PAUPER LABOR.

LABOR, PROTECTION TO. Basis.—Protective labor legislation is essentially based upon that broad principle which is the foundation of all law, that it is the duty of the state to restrict the freedom of individual action in the interests of the community. Such legislation necessarily begins with the protection of the young, since it is the clear duty of the state to protect those upon whose well-being the future of the race depends and those who are least able to protect themselves. Then come: the protection of women; the guarding of machinery; inspection of places of work; regulation of dangerous trades, and other measures affecting health; prevention of accidents and compensation for injuries resulting therefrom; insurance against sickness, unemployment, and old age; payment of wages; limitation of hours of labor; conciliation and arbitration of labor disputes; and regulation of alien and convict labor.

Such legislation as exists throughout the civilized world has been obtained only as the result of constant conflict between humanitarian impulses and commercial interests, in which the deciding power has been the sympathy of the general public, sometimes backed up by verified information as to those to be protected. This public sympathy has influenced the state to consider very seriously and extensively the conflicting interests and to decide whether the advantage of protecting a particular class outweighs the disadvantage of discouraging commercial and industrial enterprise in the interest of the community at large.

Effect of Constitutions.—Labor legislation in the United States is conditioned upon and controlled by the federal and state constitutions, in which certain phrases appear which have been interpreted to enunciate a constitutional right to freedom of contract and a constitutional inhibition of class legislation. American labor legislation has been explained as a collection of exceptions to these general rules. Constitutional objections and state jealousies have prevented the passage of many needful regulatory statutes for the protection of wage-earners, and have emasculated or annulled many which were actually placed on the statute books. The Federal Constitution was formulated and adopted at a time when popular sentiment had reached its maximum in favor of non-interference on the part of government with the conditions of industry; and although industrial conditions have since undergone revolutionary transformations, which have greatly modified the relations between employer and employee, and between producer and consumer, the American people are still controlled by the ideals generated during a period of enthusiastic reaction from the regulations imposed by medievalism and mercantilism.

Attitude of Courts.—Despite legislation, the dead hand of outgrown doctrines of common law has restrained the courts in their construction of statutes. Great power is lodged in the hands of judges as to interpretation of statutes, to see whether they conform to the fundamental law of the land; and the courts have thrown what have at times proved insurmountable obstacles in the path of social reforms. The devotion of well-meaning and upright judges to a system of economic philosophy not merely outworn but to the last degree mischievous is shown in such decisions as in the case of Lochner *vs.* People of the State of New York (177 *N. Y.* 145). A statute of that state limiting the hours of bakers to 10 a day and 60 a week, which had been held constitutional by the highest New York court was set aside by a decision of the United States Supreme Court in Lochner *vs.* New York (198 *U. S.* 45) that the law interfered with the freedom of contract which was assumed to be protected by the Fourteenth Amendment. Other decisions, such as the David L. Williams case, the Knisely *vs.* Pratt litigation, and the Ives *vs.* South Buffalo Ry. Co. case in New York have held unconstitutional certain social and economic reforms, championed by the majority of the people after due deliberation, who had a right to see them enacted into law and become a part of our settled governmental policy. So much labor legislation has been declared unconstitutional that as a consequence American workingmen have come to distrust the courts much more than their English brethren.

Ante-Bellum Legislation.—In the United States, no labor legislation of importance, with the exception of the mechanics' lien law, free school legislation, 10 hour law in federal em-

ployment, and a few isolated attempts to limit the hours of labor for women and children, was passed until after the close of the Civil War. Up to within a few years, Massachusetts led the American states in protective labor legislation and her laws have served as models for similar legislation in many other commonwealths: in 1866 a child labor law was passed; in 1869 the bureau of statistics of labor was established; in the seventies a ten-hour law for women and child wage-earners was enacted and a factory inspection department organized.

Federal Laws.—Federal labor laws are only concerned with such matters as the status of seamen, and hours of labor, prevention of accidents, and employers' liability on railroads engaged in interstate commerce; alien labor; inspection of steam vessels; coal mines; trusts; and the regulation of hours, wages, and working conditions of employees in government departments.

Recent State Legislation.—Each state has its own code of labor laws which varies in the different states within very wide limits from nothing at all to a fairly substantial code; but as a whole they are elementary, enacted without any systematic planning, very imperfectly observed and enforced, and in none are they at all comparable with those of European countries. Much of the legislation in the different states has been framed by the method of copying verbatim from one state to another, resulting in the simple propagation of early forms and not toward progressive development. Some of the states, such as Wisconsin, Illinois, and New York, have advanced much further than others, the Wisconsin act of 1911 being generally accepted as the latest word on methods of safety legislation. It follows somewhat the systems adopted in nearly all European countries of providing for the establishment through state authority of scientific occupational standards of safety. At the other end of the scale some of the southern states, in which manufacturing industries are extensively carried on, have very few restrictions. A study of the laws of the various states will reveal how differently are measured the dangers which must be common to all manufacturing states.

Comparison with Europe.—If labor legislation is a mark of advanced civilization—which can hardly be denied—then the United States is far behind Europe. If, again, legal restrictions impose some commercial disadvantages on competitors in the industrial struggle—which also cannot be denied as a general proposition—then European, and particularly English manufacturers are placed at a substantial disadvantage in competing with American rivals. Similarly, some states in America are placed at a disadvantage with regard to others. The great development of the cotton manufacturing industry in the southern states as compared with New England is due as much to this cause as to the proximity of the cotton fields.

Municipal Legislation.—Labor laws enacted by municipal law-making bodies include the limitation of hours of labor on municipal work, the establishment of rates of wages, the requirement that city work be done by union labor, that certain supplies bear the union label, etc. Wages and hours are sometimes regulated in franchises.

Execution of Law.—Laws are one thing, however, and their observance another; and there is abundant evidence that in the United States the labor laws are not exempt from the operation of that corruption in public life and contempt for law which astonishes the observant European visitor. Much legislation has been rendered useless or has been emasculated through the lack of proper inspection, or by technicalities which make enforcement difficult.

See CHILD LABOR; CONTRACTING OUT OF LABOR LAWS; EMPLOYERS' LIABILITY; FACTORY LEGISLATION; INDUSTRIAL INJURIES; OCCUPATIONAL DISEASES; STRIKES; WAGES, REGULATION OF; WORKMEN'S COMPENSATION.

References: Am. Assoc. for Labor Legislation, "Labor Legislation of 1912" in *Am. Labor Legislation Review*, Oct., 1912; New York State Commission of Factory Investigation, *Preliminary Report*, 1912; J. Goldmark, *Fatigue and Efficiency* (1912). CHARLES F. GETTEMY.

LABOR, RELATION OF THE STATE TO

Common Law Doctrine.—The interference of the state with social and domestic affairs, either by legislation or administrative regulation, is natural in continental governments which derive from the Roman law, or where the notion of an arbitrary power existent somewhere over the lives, liberties and fortunes of the individual prevails. But English institutions are derived from the Teutonic democracy, led by a chieftain and judged by a general body of the freemen according to the customary law; and while no evolutionary institution need be either logical or consistent, and while there was much attempted legislation by early statutes regulating both labor and prices, it is nevertheless true that the notion passed away before the statutory assertion of the older principle of freedom of trade and labor. The approach of the *laissez faire* era was further accelerated and defined in the common law by judgments and statutes repressing and forbidding the still greater interference of guilds in restraint of trade and free labor (*see* Norwich Tailors' Case, etc., de-

scribed in Stimson, *Popular Law Making*, 174). Thus the doctrine that the state should not interfere with private industry or any private relation or contract became fully established early in the seventeenth century, and lasted for about two centuries. Even before that, it was the general common law; and when the state interfered, as it frequently did by statute, it was not for the purpose of protecting labor, but of controlling or compelling it.

Fourteenth Century Legislation.—A brief description of the labor laws of these four centuries may here be interesting. In 1335 the statute of York allows free trade in England to foreign merchants; in either 1328 or 1340 is a statute declaring that all merchants shall be allowed to come freely into the kingdom. In 1349 appears the great landmark, the first Statute of Labor, passed in consequence of a scarcity of labor due to the Black Death the year before; it requires all persons able in body under sixty to do labor to such persons as require labor, or else be committed to gaol. No workman or servant can depart from service before the time agreed upon, and the old wages prevailing before the Black Death and no more shall be given. Victuals shall be sold only at reasonable prices fixed by the mayor; and no person shall give anything to a beggar who is able to labor. It is noted by Barrington that this statute is probably illegal because the Commons did not join in its enactment, a significant fact; however that may be, in 1350 the statute was amended by an act in which the Commons did join; and elaborate provision was made for the amount of wages to be paid for all sorts of service including agricultural service: common laborers, one penny; mowers, three pence; carpenters, two or three pence; masons, three or four pence; servants, one-half a penny, etc. Ten years later the statute was again confirmed and special provision made that work in gross should be lawful, *i. e.*, work by contract; the guilds having then, as they do now, endeavored to prevent all piece work. Laborers refusing to work may be imprisoned, and may not depart to some other county. This act, although claimed to have been repealed by general words in 5 Elizabeth, was not expressly repealed until 1869. In 1362 handicraftsmen by statute were allowed to "use but one mystery."

In 1377 came the last statute concerning villeinage, a status which will, applying to free men, hardly fall within the scope of this discussion. This statute of Richard II is the opposite of a fugitive slave law, for while it provides that villeins refusing to labor may be committed to prison without bail at the complaint of the landlord, it also enacts that villeins fleeing to cities were made free after they had been in a town a year and a day. Shortly after, in consequence of Wat Tyler's rising, villeinage disappeared, and a money wage was paid agricultural laborers.

Fifteenth Century Legislation.—In 1388 is another Labor Statute restricting each laborer to his hundred; requiring him to follow the same trade as his father after reaching twelve years, and again fixing wages at a fixed sum; but the next year this effort was again abandoned and wages were to be fixed Easter and Michaelmas by a justice of the peace. In 1425 there is legislation in the interest of what we should call non-union labor; masons are forbidden to confederate themselves into chapters, etc.; and in 1436 is the first statute against by-laws in restraint of trade, aimed at guilds and corporate companies making unlawful ordinances as to the price of their wares for their own profit and to the common hurt of the people, and holding such ordinances penal and invalid, except when approved by the chancellor; precisely what is now proposed in regulation of our trusts. In 1444 wages are again fixed, and the wages of women at only about a half a penny below those of men. Servants in husbandry must give half a year's warning before departure. In 1503 by-laws of guilds restraining the members from invoking their rights at law are made unlawful by statute, and also any ordinances of guilds or others "against the common weal of the people."

Sixteenth Century Legislation.—In 1514 is the most elaborate of all acts fixing the wages and hours of labor, and in 1562 under Elizabeth the Great Statute of Laborers, consolidating all previous laws; it still recognizes the principle of compulsory labor, of fixing the hours of labor and the rate of wages. Men not using an industrial craft may be compelled to serve in husbandry between the ages of twelve and sixty; unmarried women in like manner between twelve and forty, and none may use any manual art who has not been apprenticed to the same. Masters may not discharge servants without reasonable cause or a quarter's warning, nor may any servant be employed without a testimonial. But this ponderous statute marks, as is frequently the case, the culmination of the whole movement. It soon fell into disuse and there was no further regulation of labor in England for nearly three centuries.

We thus arrive at the legal theory that labor is absolutely free, both of compulsion, or regulation by statute, or at the behest of combinations of others, as labor guilds or unions. This principle was vigorously asserted in the courts whether based on these early statutes or the common law. It was for centuries so clearly and commonly understood as to be almost a part of the British constitution, and on this ground the first introduction of the principle of state regulation as applying to the labor even of children or of women or young girls in factories, fomented by the late Earl of Shaftsbury, was vigorously resisted. In 1844 the effort at limiting the hours of labor began, with a bill to fix the hours of labor of women and young persons in factories at twelve a day (in

fact, a ten hour day, as two hours were allowed for meals) and night labor of females in factories was forbidden.

American Theories.—At this point the difference between the American and the British constitutions comes into view. No British constitutional principle restricts the power of Parliament in any way. It may, therefore, legislate in such a manner as to deprive people of freedom of contract or to control the liberty, the hours of labor, or generally regulate the industries of even adult men. Such, of course, is not the case in the United States both under the Fourteenth Amendment and the state constitutions, it has been almost universally held that the liberty of a person of twenty-one may not be restricted by legislation in these particulars. Trades dangerous to the public health or safety may, however, be regulated by statute as to the hours of employment; but there are contrary decisions as to the possibility of regulating the hours of employment of adult men for the health of themselves alone. Only a few states (Massachusetts, Oregon, Illinois) and the United States make an exception of women, and thus deny them equal liberty in the industrial field. Many believe that there is no objection to a general regulation by the state of all industries which are carried on in factories, mines, or under congestive and peculiar conditions, and that it is not necessary to restrict such limitation to the women alone; others, still a majority, that such matters are best left to private contract or at least to collective bargaining, to the local legislation of the states and varying climatic, industrial, social economic and racial conditions, or even, perhaps for similar reasons, to the local ordinances of large cities or small towns.

Workmen's Compensation.—There is no subject in which there is more general agreement now than in the wisdom and necessity of workmen's compensation laws; that is to say, legislation which shall do away with the common law doctrine or the fellow servant rule and the assumption of risk by the employee; shall do away with the great waste and injustice of litigation in the courts, and provide a fixed and definite compensation for all injuries, payable without regard to their cause, except it be solely the employees' fault, from an insurance fund possibly contributed to by the employee as well as the employer, or by the state. A New York statute, looking to this result, was declared unconstitutional by the state court of appeals in 1911. Similar statutes, however, have been adopted in New Jersey, Illinois, Massachusetts and Wisconsin and are under contemplation in Indiana and other states.

Public Employment.—The law of public employment, that is to say, the employment of labor by states, cities or municipal corporations directly, or even by contractors for such municipal corporations, is subject in the United States to different constitutional principles, the weight of opinion being that a state or municipal corporation has a free hand to interfere in all such contracts and conditions, as in England; that is to say, it may prescribe the rules which shall govern itself or its subordinate corporations in the labor contracts or works into which they shall enter.

Wages.—There has been, except in public work, no legislation in the United States fixing the rate of wages or a minimum wage, though important innovations are now being considered in Wisconsin and other states, and there is a noticeable movement to secure by legislation a minimum wage for young women. The Louisiana constitution provides that labor wages only shall be fixed; a statute of Indiana fixing fifteen cents an hour was declared unconstitutional by the state courts, and there has been hardly any other attempt.

Hours of Labor.—The interference by the state with the hours of labor has been so general in English speaking, and indeed in all modern countries, that it may be said to be universal, at least in theory, the only exception being as pointed out above, the labor of adult men in the United States, and, for practical reasons, agricultural and industrial labor.

Conditions of Labor.—Some of the conditions of labor are included under what we term generally factory legislation; but the word "factory" should not be taken too narrowly, it usually includes legislation as to bakeshops, laundries, mines, and many other occupations. In its origin it was based solely on sanitary conditions; in the case of young persons and children on the health of the laborer; in other cases on the health of the public generally. In modern times legislation has been extended to take account of moral conditions, as that young girls should not be employed at night, nor the two sexes assigned to the same room, nor girls serve liquor in bar-rooms, etc. The continental legislation goes further than ours, in that it looks after the health of women before and after childbirth. Nothing of that kind has yet been enacted in this country. But the conditions of labor normally include more than mere sanitary surroundings. Practice of fraud is usually ground for labor legislation, as is the nature of the contract itself; arbitrary imposing of fines for imperfect work; the requiring reciprocal notice of the end of service; the prohibition of the blacklist; weekly or monthly payment laws; laws requiring money to be paid in cash, not in checks or supplies, laws forbidding "company stores," company lodging houses, or payment by store orders, regulating the payment for piece-work, screening laws in coal mines; regulating labor upon shares; crop divisions; the exaction of bonds from employees; the prohibition of charitable or relief funds to which the employee is invited or compelled to contribute; company physicians; and interference by the employer with the political rights of the employee.

Protection of Wages.—There is very general legislation as to the attachment of wages, forbidding them to be assigned, or regulating the rate of interest to be charged on loans secured by such assignment. The ordinary exemptions of property from execution are not in many states valid as against claims for labor performed, and a preference is given to wage debts. Stockholders in corporations are made individually liable for the claims of labor; and no important work, as of a railroad, etc., may be instituted without proper security for their claims. Their injury and beneficiary funds are exempt, and an effort is made to exempt them even from the unlawful acts of the members of the union to which they belong. Many other legal privileges are given them by statute; thus, actions for wages shall stand first in order for trial; no security for costs may be required; additional costs may be recovered; no court fees are required; no stay of execution allowed; and a special attorney's fee may be recovered. These statutes exist only in a few states and they are, possibly, unconstitutional.

Convict Labor.—The state may, of course, regulate labor in its own jails, and it very commonly regulates it in the supposed interest of free labor; that is to say, it may produce no convict-made goods in competition with free outside labor in the state; and there has been a determined effort, hitherto unsuccessful, under the interstate commerce clause of the Constitution to prohibit such convict labor from coming into competition with the product of other workmen in the state. Similar legislation in the interest of the laws against alien labor is frequent, but much of it is unconstitutional because contravening the provisions of national treaties.

Schools.—The apprentice system has vanished, and with it much of the education of our skilled labor. In its place we have a somewhat ineffective effort to establish industrial or trade schools by law, not always warmly supported by the workmen themselves.

Sweat Shops.—The matter of sweatshops as distinct from factories has received recent attention, and it may be stated generally that good sweatshop laws now exist in the northeastern states; a sweatshop being commonly defined to be a dwelling house or room in a house not a factory where paid labor other than that of the members of the household is employed; the constitutional objection to such legislation being, of course, that an Englishman's house is his castle, and it is somewhat difficult for the state to regulate what he may do within his doors, either with his own family or his friends, especially when he does not pay them himself, but they all work for some central factory.

Trades Unions.—The common law of master and servant is much developed and supplemented by our modern statutes, but this can hardly be called state interference. Trades unions are universally made lawful and given legal protection; while on the other hand unlawful combinations whether of employer or employee, boycotts and blacklists are forbidden by statute; but this can hardly be called state interference, for it is but the expression or the amplification of the old common law. The same may be said of a recent attempt to interfere with courts of chancery to limit or regulate the issuance of injunctions (*see*) by contempt. Both matters are much complicated by the peculiar situation in the United States whereby any instrumentality of interstate commerce is removed from state regulation and placed under the authority of the courts. This makes possible the use of the federal power, civil or military, in great railroad strikes.

Soldiers and Sailors.—Sailors and soldiers have always been outside the ordinary common law affecting labor, their position having been considered anomalous from the earliest times.

See ARBITRATION OF LABOR DISPUTES; BOYCOTTS; EMPLOYERS' LIABILITY; FACTORY LEGISLATION; HEALTH, PUBLIC, REGULATION OF; INDUSTRIAL INJURIES; MINE LEGISLATION FOR LABORERS; PEONAGE; STRIKES; and under INJUNCTION; WAGES.

References: U. S. Commissioner of Labor, *22d Annual Report*, 1907, collection of the labor laws of the State and U. S., *Labor Bulletin No. 70* (1905); H. de B. Gibbins, *Industrial Hist. of England* (1902); A. Maurice Low, *History of British Labor Legislation* (1904); B. L. Hutchins and A. Harrison, *Hist. of Factory Legislation* (1911); F. J. Stimson, *Popular Law Making* (1911), ch. iv; U. S. Industrial Commission, "Foreign Labor Laws" in *Report*, XVI (1901); V. S. Clark, *Law of the Employment of Labor* (1911); Washington Gladden, *Labor Question* (1911); Norman Hapgood, *Industry and Progress* (1911); H. S. Person and others, *Labor Laws and their Enforcement* (1911); *Am. Year Book, 1910*, and year by year.

FREDERIC J. STIMSON.

LABOR, SECRETARY OF. Upon the establishment of the Department of Labor in 1913, the following Secretary was appointed:

1913 (March 5—), William Bauchop Wilson.

LABOR, WOMEN'S, LEGISLATIVE CONTROL OF. Legislative control of women's work assumes three aspects: (1) the removal of limitations under which self-supporting women have labored in the past; (2) the regulation of working conditions to secure safety, decency, good order, and to prevent excessive physical strain; (3) legislative interference intended to furnish protection against economic exploitation.

Legislation Removing Disabilities.—With the social and economic changes of the early and middle nineteenth century, the disabilities

under which women suffered in the form of exclusion from the learned professions and governmental positions and, when married, from incapacity to control their property and to dispose of their earnings, became unendurable. The recognition of the right of married women to control their earnings is discussed elsewhere; but reference should be made here to the opening up to them of professional opportunities. In some states these opportunities have been offered without legislation by judicial action during litigation (*Re* Leach, 134 *Indiana* 665), in some without litigation, as in Kentucky; in others, legislation has been found necessary (Bradwell *vs.* the State, 55 *Ill.* 535, 16 *Wallace* 130), and statutes have been enacted, as in Illinois and Washington, or amendments to the constitution adopted, as in California, declaring that sex shall not constitute a disqualification for "any lawful business, vocation, or profession."

Legislation Intended to Secure Decency, Good Order, etc.—From two forms of employment women are often excluded. Underground work in mines has been, for a half-century, regarded as an unsuitable employment for women, and is prohibited in fourteen states, Alabama, Arizona, Arkansas, Colorado, Indiana, Maryland, Missouri, Oklahoma, Pennsylvania, Utah, Washington, West Virginia, and Wyoming. Similarly, objection is felt to the employment of women and girls in places where alcoholic liquors are sold. The alliance between the saloon and the house of prostitution is a matter of common knowledge, and the presence of women as ostensible saleswomen in the saloon is recognized as a device for securing patronage for the immoral establishment. The form of control adopted has been the exclusion of women from establishments of this kind other than those conducted by members of their own family. Legislation of this kind is found in Arizona, Connecticut, Iowa, Louisiana, Maryland, Michigan, Missouri, New Hampshire, New York, Vermont and Washington. In this connection, attention should be called to provisions commonly found in factory acts requiring adequate toilet accommodations and rest-rooms, and decent language on the part of foremen and overseers [*see* Del. Act (1897), 452, §§ 1–5; *Ill. Rev. Stats.* (1911), 48, § 109; *Minn. Act* (1909), 499, §§ 3–6; *N. Y. Consol. Laws* (1909), 31, § 160; *Ohio Gen. Code* (1901), § 1008 *et seq.*]

With these forms of control should be classed those provisions that require seats for women workers, that limit the length of the working-day, and prohibit night work. Legislation on the first point is found in all except nine states, Arkansas, Idaho, Mississippi, Montana, Nevada, New Mexico, North Dakota, South Dakota and Texas, is universally applicable to mercantile establishments, and, in other states than Alabama, Maryland, South Carolina, and Tennessee, to other kinds of establishment as well.

The control over the working-day assumes two forms: (1) limitation of its length; (2) prohibition of night work. With reference to the length of the working day, it may be said that industrial communities have come to an understanding that an unregulated working-day cannot be safely allowed to women and girls even in those industries not attended with peculiar dangers to the health of the workers. It is now generally accepted that ten hours is the outside limit to be allowed, and Connecticut, Illinois, Kentucky, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, and Virginia, have set the ten-hour limit for women workers in certain employments. Michigan, Missouri, and Montana have enacted nine-hour laws; Arizona, California, Colorado, Washington, Wisconsin, and Wyoming have adopted eight hours as the outside limit for the working day of women wage-earners. Pennsylvania, however, has a twelve-hour limit; and Georgia, an eleven-hour day for all textile workers whether men or women.

The prohibition against night work, which has likewise been adopted in most European countries, is found in Indiana, Massachusetts and Nebraska, and for young women under twenty-one years of age in New York. This legislation regulating the day's work and prohibiting night work has generally applied at first to manufacturing and mechanical establishments, with which are commonly grouped laundries, because the work is similar in the use of machinery, the division of labor, and the heavy drain on the physical strength. After a law has been secured affecting these classes of establishments, the practice has been to secure amendments including mercantile establishments, hotels and restaurants, telephone and telegraph companies, and finally offices and public institutions.

The special protection of child-life by the prohibition of women's work immediately before and after child-birth, while a feature of the legislative program in many European countries, has as yet been enacted into law only in the two states of Massachusetts and New York.

Regulation to Prevent Economic Exploitation.—The establishment of a legal minimum wage is the latest device adopted for the protection of wage-earning women. Although proposed in several states, legislation has been as yet (May, 1913) enacted only in the state of Massachusetts, where a Minimum Wage Commission, consisting of three members is authorized, with power after July 1, 1913, to call into existence wages boards in industries in which a considerable number of women workers are believed to be underpaid.

The determinations of these boards, if approved by the Commissions, must after hearings be published. Notice should be taken of the fact that much legislation sought ostensibly in the interest of the public health or of the workers' health, such as the ten-hour-day agitation, is really enacted in the belief that under conditions of modern industry the women workers in other lines of employment than private service in the home are at a disadvantage as compared both with their employers and with men wage-earners. Notice should also be called to the fact that the value of the legislation here referred to depends largely on the adequacy of the provision made for its enforcement through the creation and maintenance of a well-equipped, independent and courageous department of factory inspection.

See EMPLOYMENT AGENCIES; FACTORY INSPECTION; SWEATSHOPS; WAGES, REGULATION OF; WOMAN SUFFRAGE; WOMEN, LEGAL RIGHTS OF; and under LABOR.

References: E. Abbott, *Women in Industry* (1910); L. D. Brandeis and J. Goldmark, *Women in Industry; Fatigue and Efficiency* (1912); Muller *v.* State (1908); Ritchie *v.* the People (1909); People *v.* Elerding (1912); U. S. Bureau of Labor, *Report on Condition of Woman and Child Wage-Earners in the U. S.* (1910–1912); Am. Assoc. for Labor Legislation, *Publications*, 1907; Int. Assoc. for Labour Legislation, *Quarterly Bulletin*, 1906, 89; U. S. Bureau of Labor, "Overtime and Night Work of Women," *Bulletin No. 91* (1910); Oliver Schreiner, *Women and Labor* (1911); *Am. Year Book, 1911*, 337, 367, *ibid, 1912*, 423.

S. R. BRECKENRIDGE.

LABORATORIES, PUBLIC RESEARCH. Public research laboratories are of three kinds: (1) state and municipal, for investigations connected with health, industries, and natural resources; (2) federal, *e. g.*, the Bureau of Chemistry, Bureau of Standards; (3) those connected with state universities and state colleges, like the agricultural experiment stations, supported by state or federal grants or by both. The last group is the most numerous, each of the 48 states receiving from the United States Treasury, under Acts of Congress of 1887 and 1906, $30,000 annually for the work of these stations and their laboratories. Hawaii, Porto Rico, Alaska, and Guam are also provided for. Certain states maintain laboratories in connection with geological, biological, and mine surveys, *e. g.*, Wisconsin, North Dakota and Washington. Illustrations of special laboratories, some maintained by the state and some by the Federal Government, are those for hygiene (Wisconsin), for investigating tuberculosis (California), for bubonic plague and for malignant diseases like cancer (New York). Public research laboratories must not be confused with those charged with routine tests, examinations, and analyses of milk, water, fertilizers, oil, gas, etc., under the direction of a state or municipal chemist, bacteriologist, veterinarian, or health officer. See EDUCATION, TECHNICAL; HEALTH, PUBLIC, REGULATION OF; OBSERVATORIES, PUBLIC.

K. C. B.

LA FOLLETTE, ROBERT M. Robert M. La Follette (1855–), a native of Wisconsin, was admitted to the bar in 1880 and in 1884 was elected as a Republican to represent the third Wisconsin district in Congress. In the House, where he served from 1885 to 1891, he was a member of the ways and means committee, and in that capacity he contributed to the framing of the McKinley Tariff Act of 1890. In 1890 he was defeated for reëlection. He set himself resolutely to break down the party machine and to control the railroads. After failing, in 1896, and again in 1898, to obtain the gubernatorial nomination of his party, he was both nominated and elected in 1900. He was reëlected twice, in 1902 and 1904; but, January 25, 1905, he was elected to the United States Senate, whereupon he resigned the governorship. In 1911 he was reelected for the term 1911–1917. La Follette has long been identified with the element which developed into the "progressive" wing of the Republican party. It was under his leadership that the legislature of Wisconsin adopted, in 1903, a measure for the taxation of railway property on the same basis and at the same rates as other property; in 1905, a law vesting in a public commission the regulation of railway rates within the state; and, in 1904, a primary election measure in accordance with which all nominations within the state are made by Australian ballot. In 1912 he received 41 votes in the Republican national convention as a candidate for the Presidential nomination. See INITIATIVE; PROGRESSIVES; RAILROAD COMMISSIONS, STATE; REFERENDUM; REPUBLICAN PARTY; WISCONSIN.

References: P. L. Allen, *America's Awakening* (1906), ch. iv; R. M. La Follette, "*Autobiography*" in *Am. Magazine*, LXVII, 1910, 660–674, LXVIII, 1911, 3–15, 143–156; G. E. Roe, "La Follette and Representative Government" in *Independent*, 1908, LXIV, 717–725.

F. A. O.

LAISSEZ FAIRE. The first use of this phrase to designate a form of government policy is variously ascribed to the merchant Le Gendre, Boisguilbert, Marquis d'Argenson, and commonly to Gournay who completed it by adding *laissez passer* and popularized its use about the middle of the 18th century. It signifies "let do," "let make," meaning let each person make what he chooses, when, where and as he chooses; let there be complete industrial freedom. The addition, "*laissez passer*," "let pass," specifically emphasized the demand for

a similar freedom of movement for persons and for goods: *i. e.*, commercial liberty. *Laissez faire* therefore designates the policy of non-interference by government with economic activities of its citizens. The phrase was coined in protest against regulations and restraints which, under the influence of mercantilism, governments had imposed on industries, occupations and trade; and as a maxim it became a trenchant weapon to destroy them. Such measures as monopolies, apprenticeship and settlement acts, market regulations, navigation acts, corn laws, had survived the conditions to which they first applied. They not only resulted in injustices, but also hampered the application of new inventions and methods to cheapen and increase production, enlarge markets and promote general welfare.

By urging on governments the *laissez faire* policy with view to removing these fetters on industry and trade, economists and liberal political philosophers cleared the way for the industrial revolution. Unrestricted competition was expected automatically to maintain harmony between individual and social interests. But failure to realize this expectation caused, since about 1850, a reaction in which government is again striving by law to maintain a basis for "fair" competition and for the conduct of what are now recognized as monopoly services, as, for instance, in the United States, labor laws, interstate commerce (*see*) regulation, Pure Food Law (*see*), Sherman Anti-Trust Law (*see*), city light and transport services.

See COMPETITION; ECONOMIC THEORY, HISTORY OF; PRODUCTION.

References: A. Oncken, *Die Maxime Laissez Faire et Laissez Passer* (1886), *Geschichte der Nationalökonomie* (1902), 273–275; H. C. Adams, "Relation of the State to Industrial Action" in Amer. Econ. Assn., *Publications*, I, N. 6 (1887); Adam Smith, *Wealth of Nations* Bk. IV., ch. ix; J. W. Garner, *Intro. to Pol. Sci.* (1910), 274–297, 320–321.

E. H. VICKERS.

LAKES, JURISDICTION AND NAVIGATION OF. The boundary of the United States and Canada runs through the center of the four border lakes and their connecting channels; consequently, jurisdiction over the lakes is shared by the two countries. Both countries have an interest in maintaining the natural level of the lakes in order to keep the water power at the Sault Ste. Marie and at Niagara undiminished, and in order that the depth of harbors and of the channels connecting the lakes may not be lessened. There is a permanent International Waterways Commission, consisting of three Americans and three Canadians, that has control of the use of the waters of the lakes for power and other purposes. Within the territory of the United States, navigation and shipping are subject to the same laws and regulations as prevail upon the other natural waterways in the United States (*see* NAVIGATION, REGULATION OF; NAVIGABLE WATERS). Each country provides the necessary aids to navigation at its own ports.

In 1890, it was decided to dredge the harbors and connecting channels to a depth of 21 feet so as to accommodate vessels with a draft of 20 feet. The canal and locks at the Sault Ste. Marie have been enlarged to meet these standards (*see* CANALS). According to the census of 1890, the tonnage of shipments on the Great Lakes for the year 1889 was 25,266,974 short tons; the census of 1906 reported the tonnage of shipments to be 75,609,649 short tons; during the year 1910, the traffic of the Great Lakes amounted to 84,414,636 short tons. In 1880, there were 3,127 vessels on the Great Lakes with a total documented tonnage of 605,102; in 1910, 3,273 vessels with a tonnage of 2,895,102. Most of this tonnage consisted of steamers which, in 1910, numbered 2,107 and had a tonnage of 2,508,469 tons. The lake fleet, taken as a whole, is the most efficient portion of our merchant shipping.

The traffic of the Great Lakes is handled by four kinds of carriers:

(1) Steamers of about 5,000 tons cargo capacity, operated as lines for the handling of package freight, and, to some extent, for the transportation of passengers. Vessels similar to these are operated by independent carriers chiefly for the transportation of lumber and grain.

(2) Barges, which consist in part of small craft used for moving various kinds of bulk traffic from one port to another. Large steel barges are also used for carrying ore down the lakes.

(3) Bulk cargo steamers used mainly for the transportation of ore. The largest of these bulk carriers can transport from 12,000 to 14,000 tons of ore.

(4) Sail craft, mostly schooners, now much reduced in importance.

See AREA OF THE UNITED STATES; COMMERCE, AMERICAN, MOVEMENT OF; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; HARBOR SYSTEMS; NATIONAL WATERWAYS COMMISSION; NAVIGATION, REGULATION OF; PHYSIOGRAPHY OF NORTH AMERICA; RIVER AND HARBOR BILLS; SHIPPING, REGULATION OF.

References: E. R. Johnson, *Ocean and Inland Water Transportation* (1906), *Elements of Transportation* (1909). E. R. JOHNSON.

LAKES TO THE GULF WATERWAY. In 1889, the legislature of Illinois adopted resolution advocating the establishment, by the Federal Government, of a 14-foot waterway from Chicago to the gulf. The project was given an impetus by the contruction by the city of Chicago of the Chicago drainage canal (*see* CANALS) which was completed in 1900. This waterway is 22 feet deep, has a width of 158

feet on the bottom and 244 feet at the surface, and extends 27 miles from the Chicago River at a point six miles from Lake Michigan, to Lockport on the Desplaines River, a tributary of the Illinois River. Should the United States carry out the Lakes-to-the-Gulf project, the drainage canal would be incorporated in the waterway.

The River and Harbor Act of June 13, 1902, authorized the survey of a 14-foot waterway project from Chicago (Lockport) to St. Louis; and, in 1905, the engineers reported that such a waterway could be constructed for $30,000,000, and could be maintained by an annual expenditure of $310,000. The River and Harbor Act of 1907 provided for the survey of a 14-foot channel from St. Louis to the Gulf. It was found that the cost of such a channel would be $128,600,000, and the maintenance expenses would be $6,500,000 annually. Thus, the first cost of a 14-foot waterway from the Chicago Drainage Canal to the Gulf would be $158,000,000, and the annual maintenance charges would be nearly $7,000,000.

The board of 1907–09 recommended a 9-foot instead of a 14-foot channel. The reasons advanced in support of the 9-foot depth were as follows: (1) A 14-foot waterway would not be suitable for existing lake or ocean vessels. A river channel would not be used by lake and ocean vessels which "are poorly constructed for navigating a tortuous river with a swift current. . . . The ratio of length to beam is too great and the rudder power insufficient." (2) The project for the Ohio River provides for a low-water depth of 9 feet. (3) The demands of commerce would be met by a 9-foot barge canal. The views of the board were approved by the board of engineers for rivers and harbors, and were also concurred in by the chief of engineers.

Nevertheless, the River and Harbor Act of 1910 appropriated $50,000 for further surveys in connection with the 14-foot project, and $1,000,000 to begin the work of construction, provided the project should be found feasible. The surveys required by the act of 1910 were in progress during 1911.

See CANALS AND OTHER ARTIFICIAL WATERWAYS; LAKES, JURISDICTION AND NAVIGATION OF; NATIONAL WATERWAYS COMMISSION.

References: "Report on Survey of Mississippi River" in *House Exec. Doc.*, 61 Cong., 1 Sess., No. 50 (1909); "Report on Survey of Waterway from Chicago to St. Louis" in *House Exec. Docs.*, 59 Cong., I Sess., No. 263 (1905).

E. R. JOHNSON.

L'AMISTAD CASE. In 1839 a vessel bound from one Spanish-American port to another was seized by slaves on board and brought within the coast waters of the United States. It thus became the subject of international diplomacy, turning upon the question whether the American court could dispute the statement of the ship's papers that these persons were slaves. The federal courts took jurisdiction and discharged the negroes, on the ground that under the Spanish law they were not slaves. See SLAVE TRADE; SPAIN, DIPLOMATIC RELATIONS WITH. **References:** H. von Holst, *Hist. of the U. S.* (1879–1892), II, 322–329; bibliography in A. B. Hart, *Manual*, § 80 (lect. 52); J. B. Moore, *Arbitrations* (1898), I, 391–425.

A. B. H.

LAND AND REAL ESTATE TAX. See TAX, LAND AND REAL ESTATE.

LAND BANKS, COLONIAL. During the earlier colonial period there was great lack of capital in loanable form. Specie was scanty in the country, and wealth was largely in real estate or land. Various projects were therefore planned to organize land banks whereby bills of credit might be loaned on real estate security. The most notable private banking scheme of this nature was projected in Massachusetts in 1740. Each subscriber to the bank's stock was to furnish mortgage security for his loan, on which interest was to be paid; and the loan was to be gradually liquidated by the annual payment of proportionate parts. In 1741 its operations were checked inasmuch as the plan was contrary to the provisions of the "Bubble" Act enacted by Parliament in 1740. See PAPER MONEY IN THE UNITED STATES. **References:** A. M. Davis, "Banking in the Province of Massachusetts Bay" in Am. Econ. Assoc., *Publications*, Ser. 3, II (May, 1901), No. 2; D. R. Dewey, *Financial History of the United States* (1907), 24–27.

D. R. D.

LAND, CONDEMNATION OF. See CONDEMNATION OF LAND.

LAND GRANTS. Although exact statistics are impossible of compilation it is estimated that the amount of land granted by the United States without direct return has reached about 500,000,000 acres, or more than two and a half times the area of the original thirteen states. These grants have been made to individuals, to states and territories, and to corporations.

To Individuals.—Of the former, the largest in amount are the homestead (*see*), amounting to 127,846,424 acres in 1912. Next in amount are the bounties for military service which cover 68,796,510 acres (*see* BOUNTIES TO SOLDIERS AND SAILORS). Even before the public domain existed Congress promised land grants to officers and men enlisting in the regular forces during the Revolution. Bounties in land were also offered for the War of 1812 and the Mexican War. In 1850 and 1855 more liberal provision was made for service in the various prior wars and under the latter act almost half the total military warrants were issued. Congress also satisfied Virginia bounty

grants to the extent of some 2,500,000 acres. Other grants to individuals were the donations to settlers in Florida (1842), Oregon (1850), Washington (1853), and New Mexico (1854), which called for over 3,000,000 acres. Further legislation of this nature was rendered unnecessary by the Homestead Act of 1862. Special grants to individuals have been surprisingly rare.

To States.—The grants to the states have covered many objects. Largest in amount have been the grants for common schools (*see* EDUCATIONAL LAND GRANTS), 81,064,300 acres. Second in area are the grants of swamp-lands. Under the theory that the states could best reclaim the swamp-lands within their limits and thus increase the value of the remaining land, the act of 1849 granted to Louisiana all the swamp or overflowed lands that were unfit for cultivation. The next year a similar grant was made to all the public-land states. The proceeds realized by the states from the lands were to be devoted to reclamation. Where swamp-lands had been sold a cash indemnity was allowed the state, and where they had been located under warrants or scrip an equivalent in land was allowed. By 1909, 66,554,804 acres had been approved.

Grants have been made to the states for specific purposes for internal improvements, including canals, 4,598,668 acres; wagon-roads, 3,055,928 acres; river improvements, 2,245,252 acres; and railroads, 37,864,726 acres. The period of the canal grants extends from 1827–1866; wagon-roads, 1827–1869; river improvements, 1828–1846; railroads, 1850–1872. The theory of all these grants was that the state could supervise the construction of the improvements better than the central Government, while the reservation of the alternate sections along the right-of-way indicates that the Government expected to equalize its returns through the increase in land values. These lands were turned over by the states to the companies on various terms. Other grants to the states have been for general internal improvements, 12,651,482 acres; charitable, educational, penal, and reformatory institutions, 12,089,464 acres; public buildings, 1,362,731 acres; salines, 606,045 acres; desert land under the Carey Act of 1894, 473,999 acres to 1912. Only one grant has been made to the non-public-land states, that being the grant of scrip for agricultural colleges in 1862. The New Mexico and Arizona enabling act of June 20, 1910, is the latest example of federal grants to a proposed state. For schools New Mexico received 8,600,000 acres, and Arizona 8,100,000. Each proposed state received, in addition, 2,350,000 acres for educational, penal, and reform institutions, and the payment of certain bonds. New Mexico had previously been granted 1,343,080 acres.

Grants to Corporations.—Such grants have been made for the construction of railroads. Since transcontinental railroads were projected through the territories, the usual state grants could not be made. In 1862 grants were made directly to the Central, Union, and Kansas Pacific railroads. These included a right of way and five alternate sections on each side for each mile of road. This grant was doubled in 1864. Similar grants were made to nine other corporations, the Northern Pacific and the Atlantic and Pacific receiving twenty sections per mile in the states and forty in the territories. It was generally provided that lieu land, in exchange for any already disposed of, could be selected within the indemnity limits, which varied from twenty to forty miles on each side. The even-numbered sections were held at a double minimum price. Conditions as to the completion of the roads, and, in some cases, as to the disposal of the granted lands, were attached to these grants. The period for construction was in many cases extended, but some forfeitures were eventually declared. It has been estimated that only about half the railway mileage to which the grants applied was built within the time required by the acts. The largest grant was that to the Northern Pacific, estimated at 33,294,334 acres. To June 30, 1912, the lands certified or patented to railroad corporations amounted to 77,609,259 acres.

See CANALS AND OTHER ARTIFICIAL WATERWAYS; CESSIONS BY STATES; PUBLIC LANDS; RAILROADS.

References: Thomas Donaldson, *Public Domain* (1884); J. B. Sanborn, *Congressional Grants of Land in Aid of Railways* (1899); P. J. Treat, *National Land System, 1785–1820* (1910), 230–285. P. J. TREAT.

LAND OFFICE OF THE UNITED STATES.

The General Land Office was organized as a bureau of the Treasury Department under the act of April 25, 1812. On the creation of the Interior Department on March 3, 1849, it was transferred to that department, and is today one of the eight bureaus under its control.

Under the law, the Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government.

The General Land Office is, therefore, one of the most important bureaus of the Federal Government. Its records cover the survey and disposition of the public domain. At the present time it is organized in 15 divisions and employs some 1,419 officials. In these divisions important questions of law arise which are determined either by the commissioner, with the assistance of a board of law review, or, on appeal, by the Secretary of the Interior. There is no direct appeal to the courts. Questions regarding boundaries, entries, locations, cultivation improvements, forfeitures, assign-

ments, are but some of many. The construction of foreign and Indian treaties is at times involved. Countless difficulties arise regarding the great railroad and state grants, private land claims, bounty-land warrants and locations, Indian allotments, and scrip locations. With very few exceptions the purchase, location or entry of land is made through the local land offices. Four of these were established in Ohio in 1800, and others have been from time to time established and closed as lands were placed on sale. At present there are 100 district land offices in the United States and three in Alaska. These offices are in charge of a register and a receiver. The district land offices in Ohio, Indiana, and Illinois were closed in 1876, and in Iowa in 1910, but offices still exist in all the other public land states and territories. Surveys of public lands are made under the direction of this office. The first surveys, 1785–8, were performed under the geographer of the United States. A surveyor-general for the territory northwest of the Ohio was appointed in 1796, and surveyors for various areas at later dates (*see* SURVEYS OF LAND). In 1822 the practice of appointing a surveyor-general for each state originated. At present twelve surveying districts exist in the United States and one in Alaska. The field notes of the surveys and the township plats are preserved in the General Land Office. The tract books, on which the details of entry, filing, etc., are noted "constitute an index as to the disposition of all the public lands." For the protection of the public lands a field force is engaged, under this office, in the investigation of timber trespass, unlawful enclosure, fraudulent entry, and other offenses against the land laws. **See** LAND GRANTS; PATENTS TO LAND; PUBLIC LANDS. **References:** Thomas Donaldson, *Public Domain* (1884), 164–177; Public Land Commission, *Report*, 1905, 126–137. P. J. T.

LAND RECORDS. In all the states a public record is kept of documents affecting titles to real estate; and such documents must be officially recorded to be valid against an innocent third party. This system of public records has developed in America. At common law in England there was no obligation to record conveyances affecting titles to land. The Statute of Enrollments (27 Henry VIII, c. 16) for the registry of bargains and sales was largely ignored; and while several recording acts for local districts in England were passed early in the eighteenth century, no general system of land registration was established in that country until 1875.

Public records of land conveyances were early introduced in New England and other colonies before the first of the English local acts; and they were well established in most of the colonies before the Revolution. These public records are now the recognized basis for determining title to land.

The documents recorded vary to some extent in the different states; but regularly include warranty and quitclaim deeds of sale, mortgages and satisfaction of mortgages, notices of liens, easements, and other instruments. Some documents affecting titles to land are, however, recorded elsewhere than the local record office—such as United States patents, tax liens, judgments and legacies.

Exact copies of the various documents are made, usually written, and bound in large volumes, which form a bulky collection, especially in counties containing large cities where there are many transfers of small parcels of land. Usually indexes are prepared, but these vary a good deal in detail and usefulness; and at best the task of searching the records to verify the titles to any piece of land is a tedious and expensive process. To avoid the expense and delay of repeated examinations of the records for each transfer or mortgage, abstract and title guaranty companies have been formed who prepare abstracts of the records.

As the recorded documents only establish a presumptive title and are not conclusive evidence, there is generally some risk of defects in titles being disclosed. To meet these difficulties several states have now provided for an official determination and registration of land titles, known as the Torrens System.

See CESSIONS BY STATES; PUBLIC LANDS AND PUBLIC LANDS POLICY; RECORDER OF DEEDS; TORRENS SYSTEM.

References: Britain R. Webb, *Record of Title* (1890); J. H. Brewster, *Conveyancing* (1904), ch. xxix. JOHN A. FAIRLIE.

LANDSLIDE. A term used to denote any conclusive victory or defeat, especially the overwhelming defeat of the party in power by the opposing party, resulting from a great revulsion in public opinion, of which the Democratic "landslide" of 1890, and the Republican "landslide" of 1896 are typical examples. **See** TIDAL WAVE. O. C. H.

LATIN AMERICA. This term as accepted today applies only to the areas of the independent republics of the western hemisphere, exclusive of the United States, twenty in all. It signifies, therefore, Mexico, Guatemala, Salvador, Honduras, Nicaragua, Costa Rica in Central America; Panama; Cuba, Haiti and Dominican Republic in the West Indies; Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, in South America. Spanish is spoken in these republics except Brazil, where Portuguese is the national language, and Haiti, where French is national. California, Louisiana, Florida, the Guianas, British Honduras, many of the West India islands and Canada, were

settled by Latin races, but are not within the term Latin America. See CENTRAL AMERICAN DIPLOMACY; PAN AMERICAN CONGRESSES; and under countries by name. **References:** H. H. Bancroft, *Hist. of Mexico and Central Am.* (1883–88); T. C. Dawson, *South Am. Republics* (1903–04); Albert Hale, *The South Americans* (1907); H. Bingham, *Across South Am.* (1904); Arthur Ruhl, *The Other Americans* (1908); C. E. Akers, *Hist. of South Am.* (1912); F. D. and A. J. Herbertson, *Central and South America with the West Indies* (1902); A. H. Keane, *Central Am. and West Indies* (1901). J. B.

LAURENS, HENRY. Henry Laurens was born at Charleston, S. C., 1724, and died in 1792. After retiring from business, he went to England to educate his sons and was one of the thirty-eight Americans in London who signed the petition to Parliament to dissuade them from passing the Boston Port Bill. Returning to Charleston, he was chosen a member of the first provincial council of South Carolina and drew up a form of association to be signed by all the friends of liberty. Elected a delegate to the Continental Congress, in 1776, he became president of that body upon the resignation of John Hancock, November 1777, and served in that office until December 11, 1778. He steadily opposed the issuing of paper money without a system of taxation for its security. While on his way to Holland, having been appointed minister to that country for the purpose of negotiating a treaty and obtaining a loan, he was captured by a British vessel and taken to London where after a trial for high treason he was imprisoned for fifteen months. After his release, he was appointed one of the five commissioners to negotiate a treaty of peace with Great Britain at Paris, and signed the preliminaries, November 30, 1782. See FRANCE, DIPLOMATIC RELATIONS WITH; SOUTH CAROLINA. **Reference:** Francis Wharton, *Diplo. Correspon. of the Am. Revolution* (1889), I, 172, 173.

J. A. J.

LAW. In defining the law, Professor J. C. Gray has said, in the juridical sense, "the law of the state or of any organized body of men is composed of the rules which the courts, that is, the judicial organs of that body, lay down for the determination of legal rights and duties." This, it is to be noticed, is a definition of *the* law, not of *a* law. The law is the whole system of rules applied by the courts. This may conveniently be termed the abstract sense of the word law. Thus we speak of the law of England, the law of contracts, etc. It is this use of the term law that we are concerned with here. On the other hand, to speak of *a* law is to make a concrete use of the term law. A law means a statute, enactment, ordinance or exercise of legislative authority and is merely one of the sources of the law.

Two other uses of the word law must be distinguished from the law in the juridical sense. First, in the physical sciences, law is used to mean deductions from human experience in the course of events. Thus we speak of the law of gravitation. Second, by natural law or law of nature, legal writers mean principles which philosophy and ethics require as those which should govern human actions, and hence as those with respect to which rules of human conduct ought to be framed.

But how do the courts, or the judges who compose them, determine these rules which make up the law of the state or the body of which they are officials? Can they arbitrarily lay down these rules? No; they are compelled to determine these rules from five definite sources of law: (1) statutes, or the formal utterances of the legislative body of the state, such as statutes of one of the United States, acts of Congress, or of Parliament; (2) judicial precedents, that is previous decisions of the same or of other judicial bodies administering a similar body of law. Thus an English court ordinarily follows previous decisions of itself or of an English court of coördinate jurisdiction, and may, though it is not obliged to, follow previous decisions of state or federal courts in the United States; (3) the opinions of experts, ordinarily communicated through the medium of text books, such as Blackstone's *Commentaries*; (4) mercantile or other customs of the community; (5) principles of morality and equity. The above definition of the law is that held by the analytical jurists who contend that the law is truly a creation of the courts. Another view which is widely held is that, although law is what the judges rule, and is identical with what they rule, it is not the law because they lay it down, but they lay it down because it is the law. In other words the judges are the discoverers, not the creators of the law; and it is true that this is the deprecatory way in which the judges themselves speak of their function. Nevertheless the view first expressed above is not only capable of clear statement, but appeals to one's observation of what actually happens as the law develops and grows from decision to decision of the courts.

See EQUITY; JURISPRUDENCE; LAW; LEGISLATION; REVISED STATUTES.

References: J. C. Gray, *The Nature and Sources of the Law* (1909), chs. iv, viii–xiii; J. C. Carter, *Law, Its Origin, Growth and Function* (1907), *passim;* W. Blackstone, *Commentaries on the Laws of England* (W. G. Hammond, Ed., 1890), introd. J. W.

LAW, ADMINISTRATION OF, BY THE COURTS. The Judicial Function.—The judicial tribunals of a country exist for the ad-

ministration of justice, that is, for the apportionment to parties litigant before them of their respective legal rights and obligations. This apportionment, however, is one dictated not by the opinion of the presiding judges as to the rights of those parties as determined by considerations of economic or political expediency or by general doctrines or individual estimates of moral desert. The courts in their decrees are, in principle at any rate, controlled by existing rules of law—they administer not justice in the abstract, but justice according to law. This law they find embodied in various forms. In European countries they find it for the most part contained in formal compilations of statutory provisions termed codes. When they are able to find no applicable provision in these written instruments they are permitted and indeed directed to resort to general principles of jurisprudence. This of course gives, in such instances, a wide discretionary judgment to the adjudicating justices, but, even here, it is one which is to be exercised in accordance with principles of law rather than of expediency or abstract moral right. In the United States, as in England, but a small part of the law which is to guide the courts is found in legislative enactments, whether in the form of codes or of separate statutes. The great body of the law is what is known as common law (*see* LAW, COMMON), and is found embodied in earlier decisions of the courts of the same or of superior jurisdiction (*see* CASES, SIGNIFICANCE OF; STARE DECISIS). This body of common law is sometimes termed unwritten law in that it has not received definite formation by the state. It is, however, written in the sense that the decisions of the courts in which it is embedded are written and printed. The common law as it had been developed in England prior to the 1776, was adopted, *mutatis mutandis*, by the American colonies and since then has continued to constitute what may be termed the foundation or substratum of the law of the several states of the Union.

Federal and State Sources of Law.—This law has been, and still is, subject to alteration, or addition to, by statutory enactments, but it still furnishes the substantial source of the legal rights of life, liberty and property. This applies, however, only to the law of the states. There is no federal common law. The law of the United States, as distinguished from that of the states, is exclusively composed of the Constitution (Art. VI, ¶ 2) and the treaties entered into and the laws enacted in pursuance thereof. The federal courts, have, however, a very considerable jurisdiction based upon the character of the parties to a suit, and in such suits are called upon to interpret and apply state law, both statutory and common. In certain of these cases, and especially in those involving general principles of commercial law, the federal courts exercise their own independent judgment as to what is the state law, uncontrolled by what the state courts may have previously determined. Upon the other hand the state courts are constantly called upon, in the cases coming before them, to interpret and apply federal law. This they do not only in those cases in which they have a jurisdiction concurrent with that of the federal courts, but in all other cases in which the rights litigated are dependent upon or limited by federal law. This they are compelled to do by reason of the fact that the federal law is not, within the states, a foreign law, but is in truth as much a part of the law of each state as is the common and statutory law of that state, and, indeed operates to supersede that law when in regulation of the same subject. Thus, as the Supreme Court in the case of Claflin *vs.* Houseman (93 *U. S.* 130) has said:

> The laws of the United States are laws of the several States, and just as much binding on the citizens and courts thereof as state laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty. Every citizen of a State is a subject of two distinct sovereignties, having concurrent jurisdiction in the State; concurrent as to place and persons, though distinct as to subject-matter. Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kinds of rights and not restrained by its Constitution in the exercise of such jurisdiction. Thus a legal or equitable right acquired under state laws may be prosecuted in the state courts, and also, if the parties reside in different States, in the Federal courts.

The same point is made by Justice Shiras in the case of Murray *vs.* C. & N. W. R. R. Co. (62 *Federal Reporter* 24) where he says:

> The duty of the courts is to explain, apply, and enforce the existing law in the particular cases brought before them. If the law applicable to a given case is of federal origin, the legislature of the State cannot abrogate or change it, but the courts of the States may apply and enforce it; and hence the fact that a given subject, like interstate commerce, is beyond legislative control does not *ipso facto*, prevent the courts of the State from exercising jurisdiction over cases which grow out of this commerce.

In addition to federal and state law, common and statutory, the courts have frequently to apply principles of law drawn from the general practice of foreign nations. This is true in the fields of admiralty and maritime jurisprudence, over which the federal courts have exclusive jurisdiction, and in all cases involving an application of the principles of international law. In either of these cases, however, a federal statute in regulation or definition of the same subject is held competent to amend or annul the general practice of nations. (See especially, Rudd *vs.* Heart, 21 *Wall.* 558, and the Paquete Habana, 175 *U. S.* 677.)

See COURTS, FEDERAL; COURTS, FEDERAL, JURISDICTION OF; UNITED STATES AS A FEDERAL STATE.

References: D. K. Watson, *Constitution of the U. S.* (1910); W. W. Willoughby, *Constitutional Law of the U. S.* (1910).

W. W. WILLOUGHBY.

LAW, ADMINISTRATIVE. **Definition.**—Administrative law is a term which has not as yet been fully adopted in the terminology of Anglo-American law. Originally a mere translation of the French *devoit administratif*, it was regarded by most English writers as inapplicable to any of the properly recognized branches of English law. For it was regarded as based upon the French conception of the irresponsibility of administrative officers which has in most cases been repudiated by the English law. The French principle of official irresponsibility was, however, merely a doctrine of the French administrative law, and its repudiation by the English law did not carry with it the result that there can be no administrative law in countries where the English law prevails. For every country having a law regulating the administration of government must have an administrative law unless governmental authorities are uniformly treated as individuals whose conduct is regulated by the ordinary rules of the private law.

Distinguished From Constitutional Law.—Administrative law, as the term has long been used in France and as it is beginning to be used both in England and this country, is then, that part of the law which regulates the administration of government. It is to be distinguished from constitutional law, in that that part of the law has primarily to do with the organization of government while administrative law has to do with the functions or activities of a government organized already. Problems of government organization are thus constitutional in character. Problems of government functions are rather administrative in character. But while thus from the point of view of scientific legal classification problems of government organization are constitutional rather than administrative in character, administrative law practically has to treat of many problems of government organization. For the ordinary writer on constitutional law has usually been satisfied to treat of the more important problems of government organization. He has confined his attention to the problems of organizing the chief executive authority and the supreme legislative authority in the state and of describing their reciprocal relations. He has done so because, in most cases where written constitutions have existed, those instruments have confined themselves to organizing these, the most important political authorities, and have left the rest of the governmental organization to be worked out by the acts which the legislature was recognized by the constitution as having the right to pass.

The laws thus passed by the legislature in framing the detailed organization of the government have not usually been regarded as constitutional in character because they are not contained in the constitution. In this way rules of law not contained in written constitutions which govern the detailed organization of government are included within the field of administrative law, although they deal with government organization rather than with government activity. Administrative law is generally conceived of as including that part of the law having to do with the detailed organization of the government. In so far as administrative law has to do with problems of government organization it may be said to supplement constitutional law.

Organization of Executive Departments.—Inasmuch as, as has been pointed out, constitutional law treats merely of the problems of organizing the more important governmental authorities and regulates their reciprocal relations, administrative law has to deal with all other problems of governmental organization. It has thus to deal with the problems of organization connected with the great executive departments which are to be found in all modern governments. Inasmuch as government organs are established for the discharge of functions, the functional activities of a government must have an effect upon the organization of that government. The functional activities of all modern governments are, however, so similar that they may without difficulty be grouped under the same general heads, which are five in number.

In the first place every modern government must enter into relations with other governments. For the carrying on of these relations we usually find a department or ministry called the department of foreign affairs.

In the second place every modern government must have for its protection against both foreign aggression and internal disorders a military force. For the administration of this force we find a department of war, which, where the geographical conditions of the country make it desirable, is entrusted with the care of the land forces merely, the marine force of the country being put in the charge of another military department called the marine or navy department or, as in England, the admiralty.

In the third place every modern government must organize courts. The administration of these courts makes desirable in most cases the establishment of a Department of Justice.

In the fourth place the carrying on of governmental activities necessarily involves provision for financial resources, and the management of these resources makes necessary the organization of a fourth department, which is sometimes called the treasury or exchequer or the finance department.

Finally every government must in addition to carrying on foreign relations, and caring for its military and judicial affairs and its financial resources, enter upon a series of activities which are undertaken for the purpose of promoting the public welfare of its people, and which may be clearly differentiated from those already enumerated. These activities are of two general classes. Either they result in im-

posing limitations upon the individual's freedom of action, in the interest of the community as a whole, or they consist in offering to the individual an opportunity which he would probably not have, did the government not act. An example of the first class of activities is to be found in the care which the government takes of the public health by imposing upon the individual the duty to be vaccinated or by quarantining persons affected with contagious diseases. An example of the second is to be found in the carrying of the mails or in the provision of public schools. For discharging these activities we find usually not one but a series of departments. In the first place we usually find a home department or department of the interior which attends to the discharge of one or more of the functions described. Again we find a department of the posts or one of agriculture or commerce. The number of departments varies with the number of activities on which the given government has entered. In the United States national government we find ten executive departments, viz.: state, war, navy, treasury, justice, post office, interior, agriculture, commerce, and labor (*see* CABINET; EXECUTIVE DEPARTMENTS, also departments by name).

Functions of Authorities.—The administrative law of a country treats of the organization in detail of all these departments and services. But inasmuch as every country of any size must have local institutions the administrative has to do with the organization of those institutions as well.

It has been said that from the point of view of scientific legal classification administrative law has to do with functions rather than with organization. The administrative law has to do therefore with the functions and powers of all the authorities, central and local, provided by the organic laws of a country. Some of the recognized branches of the law which may be regarded as parts of the administrative law are the postal law, the law of taxation, the law of officers, the law of public or municipal corporations, the school law and the public health law.

Remedies.—Finally, in so far as the administrative law sets forth the powers of administrative officers and authorities it lays down limits beyond which such officers and authorities may not go in their dealings with private individuals. In order, however, to keep administrative officers from exceeding those limits, remedies must be provided, through which individuals aggrieved may protect their rights. Where the administrative system is highly centralized, the remedy may consist in the right to appeal from the decision of a subordinate to a superior administrative officer. Such administrative appeals are naturally regulated by the administrative law since they affect the functions or powers of the officers to whom the appeal is taken. In some cases the system of administration is not centralized. In others an administrative appeal is an ineffective remedy. In such cases remedies of a somewhat judicial character are provided. In so far as these remedies consist of appeals to judicial bodies, it might be said that they form a part of the ordinary system of remedial justice and that therefore the administrative law was not concerned with them. As a matter of fact, however, the relations of government officers and individuals are so peculiar in their nature—for one party to the relation *i. e.*, the government, represents the majesty of the state—that special remedies are usually provided in these cases. As a result, remedies against administrative action even where they consist of appeals to judicial bodies, are regarded as a concern of administrative law.

Summary.—Administrative law is then that part of the law which regulates: (1) the organization of government in so far as that has not been fixed by the Constitution; (2) the powers, duties and activities of executive and administrative officers and authorities engaged in the discharge of the functions which the state has seen fit to assume; (3) the remedies open to the individual against the action of such administrative and executive officers and authorities where they attempt to exercise powers which the law does not recognize as belonging to them.

See COURTS AND TRIBUNALS, ADMINISTRATIVE; PUBLIC OFFICERS; SEPARATION OF POWERS; and departments by name.

References: M. Hauriou, *Précis de Droit Administratif* (1907); F. J. Goodnow, *Principles of Administrative Law of U. S.* (1905), *Comparative Administrative Law* (1893); J. A. Fairlie, "Administrative Power of the President" in *Michigan Law Review*, II (1903–1904), 190–210, 247–259; E. Freund, "Am. Administrative Law" in *Pol. Sci. Quart.*, IX, 1894, 403–425, *Cases on the Administrative Law* (1911).

F. J. GOODNOW.

LAW AND ORDER LEAGUES. The police department of regularly constituted government is itself a law and order league, and where such government works with normal regularity and efficiency no other is required. But when it happens that governmental provision for protection to life and property has not kept pace with the movement of population upon the frontier, or when the regular institutions become weak and ineffective or tardy or are threatened with overthrow by violence, then it becomes necessary for men to unite in temporary, extra-legal organizations for the preservation of society from anarchy. Examples of such exigency appear in the history of all new countries and of all countries in times of revolution and of special and unusual conditions due to great calamities when the legal and ordinary forces of order and justice are inadequate to the unexpected demands. The leagues of set-

tlers formed during the early settlement of the West and South for the capture and punishment of highwaymen and horse thieves; the committees of public safety in the mines of California in the days of the rush for gold; the Vigilants of San Francisco in 1851 and 1856 striving to so reform the social order that lynch law should no longer be necessary; organizations of citizens to assist the government in preventing pillage and other forms of lawlessness or crime after great conflagrations, floods or earthquakes; these are well known American illustrations. Such courses of action should be clearly distinguished from mob rule and lynch law. On the frontier they are usually a conscious preparation for the establishment of legal institutions, and in other circumstances an effort to assist in their application or supply a deficiency. See LYNCHING. References: J. Macy, "Institutional Beginnings in a Western State" in Johns Hopkins University, *Monographs*, Ser. 2 (1883); Josiah Royce, *California* (1899), ch. iv; J. Lynch, *Life of David C. Broderick* (1911). J. M.

LAW AND ORDER PARTY. A name taken by the pro-slavery party in Kansas during the struggle for the control of that territory following the Kansas-Nebraska Act (*see*) of 1854. A pro-slavery party convention in November, 1855, decided to take this name; and they denounced the free state men who had sought to adopt a constitution and establish a free state at once. These "border ruffian" avengers of "law and order" became something of a travesty in the history of Kansas. See KANSAS STRUGGLE. References: H. von Holst, *Constitutional Hist. of the U. S.*, V (1885), VI (1889); J. F. Rhodes, *Hist. of the U. S.* (1893), II, 98–107, 150–168, 229 *et seq.*

J. A. W.

LAW, CIVIL. This term is used in a variety of senses, according to the meaning of the words with which it is correlated. In ancient Rome, for example, the term *jus civile* was applied to the primitive and technical law based upon the customs of the early Roman people, as distinguished from the *jus gentium*, or the supplementary and more equitable law derived from the common practices of the nations brought under Roman authority. In the mediæval period, the term "civil law" came to be applied to the law relating to temporal matters, as contrasted with the "canon law," or the law relating to spiritual or ecclestiastical affairs. In modern times it has come to be used broadly to denote that body of national law which is derived chiefly from Rome, as distinguished from "common law" when that term is loosely employed to denote the body of laws which has been derived chiefly from England.

Modern Civil Law.—The modern civil law has its historical origin, first, in the deposit of Roman law left in the western Mediterranean provinces after the barbarian irruptions in the fifth century; and, next, in the revival of the scientific study of the Roman law, beginning in Italy in the twelfth century and thence spreading to other European countries. The ancient Roman law, which formed the basis of the modern civil law, received its final definite form in the codification made by Justinian in the sixth century—the *Corpus Juris Civilis*. But the Justinian law was, itself, the result of a long process of development, during which it had passed from a narrow body of municipal law based upon local customs, to a world-wide system of jurisprudence based upon scientific and equitable principles. The expansion and perfection of the ancient Roman law were due chiefly to two main causes: (1) the extension under the republic of the rights of citizenship to certain conquered communities, and at the same time the recognition by the Roman praetors, of the equitable rights of subject aliens; (2) the scientific interpretation of the law under the Empire, by a body of trained jurisconsults, who construed the law liberally in accordance with the principles of reason and natural justice. On account of the rational spirit which it thus acquired, and its practical adaptibility to varying social conditions, the Justinian law was gradually taken up by all the principal countries of continental Europe, and has been preserved in substance in the modern civil codes (*see* CODIFICATION).

In English Law.—Although the laws of England are usually regarded as having an independent origin, the influence of the Roman civil law is seen in the early practice of the ecclesiastical courts, the admiralty court and the court of chancery. How far the principles of the civil law were consciously or unconsciously accepted by the common law courts, is a somewhat mooted question; but that the Roman influence was not inconsiderable is evident from the text books of Bracton and his successors, and also from a comparative examination of certain portions of the common law, especially those portions relating to corporations, easements, to personal property and to contracts.

In American Law.—The extension of the civil law to the American continent was due to European colonization in the sixteenth and the seventeenth centuries, especially by Spain and France (*see* LAW, CIVIL, IN AMERICA; LOUISIANA). The civil law of Louisiana is embodied in a code first drawn up by the territorial legislature in 1808 on the model of the *Code Napoleon*, and afterwards revised by Livingstone and sanctioned by the state legislature in 1825. The law in force in the insular possessions of Porto Rico and the Philippines at the time of their annexation by the United States, was that of the Spanish Civil Code of 1889, which is retained so far as it is not super-

seded by federal legislation. But the Roman element in the laws of the United States is not restricted, as it is often supposed, to the instances just mentioned. The principles of equity administered by the state and federal courts are derived directly from the equitable jurisdiction of the English court of chancery. This court was originally an independent tribunal presided over by the Lord High Chancellor, who was himself an ecclesiastic trained in the canon and the civil law, and who, in supplementing the defects of the common law courts, adopted in large measure the rules of the Roman jurists; so that equity jurisprudence, not only in England but in the United States, is substantially Roman law (*see* EQUITY). The admiralty jurisdiction of the federal courts may, in its chief features, be similarly traced through the jurisdiction of the English admiralty court to the maritime laws of ancient Rome. The probate or surrogate jurisdiction exercised by certain state courts is based largely upon the practice of the English ecclesiastical courts in respect to the law of testamentary succession, and upon that of the court of chancery in respect to the laws of guardianship, the principles of which, in both cases, were for the great part drawn directly from the canon law and remotely from the laws of Justinian. By a comparative and critical examination it is also possible to discover a large Roman element in the American law relating to corporations, to personal property, and to certain features of real property (such as easements and the acquisition of titles by occupancy, by accession and by prescription), and especially in the law relating to contracts—so far as these laws have not been modified by statute. In fact, it may be shown that a very considerable part of the non-statutory laws practiced in the United States—except that part of the law of real propery which is related to the English feudal law—is ultimately traceable to a Roman origin, and hence may be regarded as strictly, and in substance, a true part of the modern civil law.

See JUDICIAL POWER, THEORY OF; JURISPRUDENCE; LAW, CIVIL, IN AMERICA; LAW, COMMON.

References: W. C. Morey, *Outlines of Roman Law* (1913), with references; J. Muirhead, *Historical Introduction to the Private Law of Rome* (rev. ed. by H. Goudy, 1899); R. Sohm, *Institutes of Roman Law* (English translation, 1892); P. Vinogradoff, *Roman Law in Mediæval Europe* (1909); F. J. Tomkins and H. D. Jencken, *Compendium of the Modern Roman Law* (1870); T. E. Scrutton, *Influence of the Roman Law upon the Law of England* (1885); C. S. Walton, *The Civil Law in Spain and Spanish America* (1900); E. T. Merrick, Ed., *Revised Civil Code of Louisiana* (1900); W. W. Howe, *Studies in the Civil Law and its Relation to the Jurisprudence of England and America* (1905).

WILLIAM C. MOREY.

LAW, CIVIL, IN AMERICA. Influence of the civil law in America has been almost wholly an influence of French law. The high development of French juristic writing in the eighteenth century and the fore part of the nineteenth coincided with a formative period of our law. In the first part of the nineteenth century great deference was shown to the authorities of the civil law and in New York, especially, the books abound in references thereto. But the practice of citing them fell off rapidly and ceased almost completely by the middle of the century.

Four causes operated to create interest in the civil law in America during the first half of the last century: (1) the rise of the law merchant; (2) the hostility toward England and English institutions and the feelings of friendship for France that prevailed in many parts of the country; (3) the influence of Chancellor Kent (*see*) and Judge Story (*see*) who were learned civilians and cited the civil law freely; (4) the movements for law-reform which went on at the same time.

At the Revolution absorption of the law merchant into the common law was still going on. American judges were left more to their own resources in this branch of the law than in any other. Naturally they turned to the French and Dutch treatises on the civil law and the French treatises on commercial law, since there was no common-law juristic literature upon the subject. After the Revolution, a large part of the public was hostile to England and to all that was English and it was impossible for the common law to escape the odium of its English origin. Judges and legislators were influenced by this popular feeling and there was no strong, well-trained bar to resist it. Three states legislated against citation of English decisions and there was a rule of court against such citations in a fourth. Kent found it expedient to cite French authorities to allay suspicion. But few American judges and lawyers who would have liked to make use of the civil law were able to do so effectively. Kent and Story stood almost alone. There were but few incomplete translations available, and lawyers were averse to authorities in a foreign tongue. Hence as the profession advanced in strength and learning and prejudice against English institutions subsided, citation of French treatises waned and finally vanished. During this period, the legislative reform movement revived the study of Roman law in England. A like movement went on in America and for a time added to the existing inclination toward French law.

There were few permanent results. Four or five doctrines of no great importance were taken over directly. For the most part the influence of the civil law in America has been indirect only, *i. e.*, by way of stimulus and example.

See LAW, CIVIL.

References: R. Pound, "Influence of French Law in America" in *Illinois Law Review*, III (1909), 354–365; for a different view, C. F. Beach, *Civil Law in America* (1903).

ROSCOE POUND.

LAW, COMMON. This term has two principal significations in Anglo-American jurisprudence. (1) The common English law as opposed to Norman law, the statutes or decrees of Anglo-Norman kings, the canon or church law, the Roman (civil) law, and (somewhat later) equity or the law of the king's chancellor. Indeed, in this sense the word "common law" is used as opposed to any other body of law or jurisdiction, such as the law merchant or admiralty, or (in recent times) administrative law. (2) Common law as distinct from statute law of any sort (this is the more usual American use of the term). Of course the phrase may occasionally have a more general significance still, such as general customs as distinguished from special or local; or the law common to most or all of the states as distinguished from the law of any one state or from federal law; and the phrase has been used in other languages and countries as applying to both the statutes, uses or customs as in old France and Spain.

There are undoubtedly usages and customs in all countries which become law and are recognized as law. Nevertheless the theory of the Roman law that all law must rest directly or indirectly upon the statute or decree of a sovereign has been substantially adopted in all continental countries; in England alone even of Teutonic countries has the original notion of law persisted, as the custom of the people declared originally only by a general assembly, which developed in England through the Witenagemot and the great council of the realm into a representative legislature. Thus the common law was originally unwritten and uncodified, and based on the general usage of the people. It was supposed to be known of all, so that even councils or courts were only necessary to declare it or to affix penalties. The so-called codes of English legislation before the Conquest (Ini of Wessex, Alfred, Canute, and Edward the Confessor) were merely declaratory; at most, the councils of the several English kingdoms might meet to add certain customs or liberties to those already existing. At what period after the conquest the process of adding to the common law by statute was begun it is extremely difficult to define. The term used for the first statutes is "assize," or, even earlier, "charter"; one of these words is more applicable to the judgment of the court declaring the law, and the other to a king conceding or allowing it. But by the thirteenth century we have *statutes*, even under that name, which definitely add to the common law, though the number of such only began to increase rapidly after the Commonwealth. But finally, it should be added, these early important statutes—the statute of laborers, wills, uses, and so forth—have long been considered as belonging to the common law.

Coming to America this is more particularly true. The word "common law" here, is invariably used as meaning common law in distinction from statute law, except where it is contrasted with equity, admiralty, etc., or the civil law of Louisiana, New Mexico and Arizona. All English statutes which are considered as in force in the several states of the Union, would, in those states, be considered the common law; the date of statutes thus accepted varies in a general way those antedating 1776 to those antedating 1620; and several states define exactly, in their constitutions or statutes, to what extent the English common law and such English statutes are in force within their respective commonwealths.

Bibliography: There are singularly few books on the history of the common law as such; most treatises which are even entitled "The Common Law" being but the exposition of its doctrines. Of such are Glanvil, Bracton, Littleton, and the other authorities mentioned in the third section of the introduction to Blackstone's *Commentaries*. This is true also of Francis Bacon's *A Collection of some Principal Rules and Maximes of the Common Lawes of England* (1636); and his *The Use of the Law. Provided for Preservation of Our Persons, Goods, and Good Names. According to the Practice of the Lawes and Customs of this Land* (1635). Coming down to modern times the same thing is true of O. W. Holmes, *The Common Law* (1881). The best general account, therefore, remains that of Blackstone's *Commentaries on the Law of England* (ed., 1890), especially § 3, "Of the Laws of England." This introductory section was first delivered by Blackstone orally at Oxford, October 25, 1758; and one sentence in particular is worth quoting: "Pope Innocent the Fourth having forbidden the very reading of it (the common law) by the clergy, because its decisions were not founded on the imperial constitutions, but merely on the customs of the laity," and Blackstone ascribes the revival and preservation of the common law of England to the incident of the fixing of the court of common pleas at Westminster by the provisions of Magna Charta.

See ACTS OF CONGRESS; EQUITY; JURISPRUDENCE; LAW, CIVIL; LAW, CIVIL, IN AMERICA.

References: W. Stubbs, Select Charters (1874), Pt. I, 21-51; H. V. Taswell-Langmead, *English Constitutional Hist.* (6th ed., 1905); A. E. Jenks, *Law and Politics in the Middle Ages* (1911); F. Pollock and W. Maitland, *Hist. of Eng. Law before Edward I* (1895).

FREDERIC J. STIMSON.

LAW, CONSTITUTIONAL, AMERICAN

Definition.—The constitutional jurisprudence of the United States posesses characteristics which distinguish it from other systems of modern states, as well from those which have adopted written instruments of government, as from those which have not. In order, then, that we may adequately appreciate the special attributes of American public law, it is necessary first to consider the province and qualities of constitutional law wherever it may be found.

In the broadest sense of the term, every politically organized society possesses a constitution. By this is meant that it possesses a body of rules or principles which determines the form of government which shall exist, and allots to its various departments or officials their respective powers. When, however, these rules are fairly definite, are recognized by those in authority as controlling, and are supported by a public opinion sufficient in force to offer a considerable guarantee that they will be obeyed, the state is said, in a narrower sense of the word, to possess a constitution, and the government to be a constitutional government. Thus, if the political rule be monarchial in character, the government is said to be a constitutional monarchy.

In order that these rules which regulate the distribution and exercise of political authority may be better and more exactly known, they are, in most modern states, reduced to definite written statement; and, in order that, as thus stated, they may have an additional binding force, they are usually drafted and adopted in some especially formal and solemn manner. In most cases, also, special provision is made as to the manner in which they may be revised and additions made to them. Ordinarily this method of revision and amendment is made considerably more difficult than is the enactment of ordinary legislative measures.

Among the modern great nations Great Britain stands alone as a state without a formal written instrument of government. She has, however, a government controlled by a definite body of constitutional rules and practices, many of these being embodied in important written documents, such as the Magna Charta, the Bill of Rights, the Habeas Corpus Act, etc., but however politically sacrosanct these principles thus definitely stated, and however controlling in practice the great body of her written public law, the essential characteristic of her constitutional system is that she is ruled by an omnipotent Parliament (*see*), which formally as well as legally has the legislative power to change, by ordinary statutory enactment, any and every feature and rule of her governmental organization.

The adoption of written constitutions does not prevent the existence and development of bodies of unwritten constitutional law, for however comprehensive these fundamental documents may be, there inevitably grows up a considerable body of unwritten constitutional practices as fixed and, for all practical purposes, as obligatory, as those provided for in the written instruments. Furthermore, in any event, a written constitution requires interpretation, and when this power of interpretation is confided to the courts there necessarily develops as the years go by a constantly increasing body of rules and principles, contained in the decisions which are rendered, which in the aggregate constitute the constitutional law of the country. Thus in the United States, in the more than two hundred volumes of the decisions of the federal Supreme Court, not to speak of the reported opinions of the state and lower federal courts, a complex system of constitutional jurisprudence has developed which requires the preparation of lengthy and elaborate commentaries for its statement and explanation.

From what has been said is seen that if we are to seek a definition of constitutional law, valid for all countries, and which will distinguish it from other classes of law, we cannot accept as its peculiar characteristic the fact that it is found embodied in written and formally adopted and promulgated documents denominated constitutions. Nor can we select as its distinguishing mark the fact that it is of superior legal validity. We can, indeed, say, as a general proposition, that constitutional provisions have ascribed to them a greater morally obligatory character, but this is too indefinite a criterium to serve as the basis for a definition. Nor, finally, may we describe constitutional law as made up of provisions which have a legal validity higher than that of ordinary laws; for, not to speak of England, which, according to such a description, could not be said to have any constitutional law at all, we should be met by the fact that in no other country than our own is this legal superiority of constitutional law fully recognized. For a general definition of constitutional law we are thus thrown back upon its subject matter, and are obliged to content ourselves with the description with which we started, namely, that it embraces all those rules and principles which determine the form of governmental organization of a state, and allot to its several organs or departments their respective powers.

American Doctrine.—This, for the purpose of political theory, is a correct definition of con-

stitutional law. But it is not a definition which is adequate for a nation, such as the United States, living under a written constitution which gives to its courts its final interpretation, and which obligates them, in cases of conflict between these written constitutional provisions and ordinary statutory laws to give precedence to the former. Under this system constitutional law must be said to embrace all law which, irrespective of its substance, is contained within the four corners of written instruments of government termed constitutions. Were these constitutions wholly devoted to the creation of governmental machinery, and the allotment of powers to its constituent parts, the law embraced within this formal definition would substantially coincide with that included within the definition stated above as satisfactory to the political theorist. But, in fact, many of our state constitutions go far beyond this and include provisions which, viewed with regard to the matters to which they relate, properly belong within the field of private statutory law.

The Federal Constitution has, of course, a double function to perform. It not only has to provide a governmental machinery for the Union, and to distribute its powers, but it has to delimit the respective competencies of the nation and of the individual states. Regarded as an instrument for this second purpose it is a grant of power, giving to the United States those powers which it is to possess, and leaving with the states, with but a few enumerated exceptions, those powers which are not granted. The state constitutions, upon the contrary, are, primarily, instruments of limitation. In so far as they are not devoted to providing machineries of government, they have for their end and aim the creation of limitations upon the governments which they create, which governments are held to possess all powers not denied to them by the Federal Constitution or specifically withdrawn from them by the respective constitutions to which they owe their origin. These state constitutional limitations are for the most part upon the legislatures, and the increase in their number which the more recently adopted constitutions have shown has evinced a growing distrust upon the part of the people of their legislative representatives. This distrust has also been shown in some instances by the insertion of provisions for the referendum and the popular initiation of laws. But not a few of these added constitutional clauses have been due to a distrust of the courts, the aim being so explicitly to authorize legislation as to render it practically impossible for the courts to interpose the objection of unconstitutionality as tested by the state constitutions. This, however, still leaves it possible for the state courts to hold state statutes void upon the ground that they are in conflict with the Federal Constitution, and especially with that clause of the Fourteenth Amendment which declares that "no State shall deprive any person of life, liberty or property, without due process of law, nor to deny to any person within its jurisdiction the legal protection of the laws." In those cases in which the state courts so held there is, under existing statutes, no right of appeal by writ of error to the Supreme Court of the United States, for, by the twenty-fifth section of the judiciary act, that tribunal is given jurisdiction to review decrees of the state courts, by writs of error, only in those cases in which a federal right, privilege, or immunity has been claimed and denied.

Unconstitutional Legislation.—It has already been indicated that in the United States the courts are the final interpreters of the constitutional powers of the legislatures. In this respect American constitutional jurisprudence is unique. In this country alone is the written constitutional law not only morally but legally restrictive of the law-making branch of the government. Professor A. V. Dicey, in his classic work *The Law of the Constitution* (7th ed., 1908, note VII, Appendix) calls attention to the three different meanings of the phrase "unconstitutional law" as employed in England, France and the United States. In England it means simply that, in the opinion of the one using it, the measure is opposed to the spirit of the unwritten English constitution, but not that it is, for that reason, void of legal force and therefore not enforcible by the courts, and the executive. In France the the courts will refuse to recognize its legal validity. The word "unconstitutional," says Dicey, "would probably though not of necessity be, when employed by a Frenchman, a term of censure." In the United States an unconstitutional law is one not warranted by the written instruments of government of the states or of the United States, and, as such, is held to be not a law at all. It is an *ultra vires* measure, and at most only a vain attempt upon the part of the enacting body to create a law.

When it is said that the power in courts in this country to hold void measures enacted by the law-making branch of the government of which they themselves constitute the judicial branch, is a unique one, no reference is had, of course, to the authority of our judicial tribunals to refuse to recognize the validity of those acts of the legislatures of the states which are in conflict with the provisions of federal law, for this is a right determined by the supremacy of national law over state law. This supremacy is clearly stated in that provision of Article VI of the Federal Constitution which declares that "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every

State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." It was, indeed, for a time strenuously argued by adherents of the state rights school that the right of final determination as to whether there is a conflict between state and federal law is possessed by the state courts as well as by the federal Supreme Court, in cases arising therein, but, the federal supremacy being granted, the right to hold state laws invalid because contrary to the Federal Constitution or to the laws passed and treaties entered into in pursuance thereof is not a different power from that known to, or exercised by, all constitutional states, when dealing with the acts or ordinances of subordinate law-making bodies, such, for example, as colonial or local legislatures, or, indeed, any administrative agencies with reference to the rules and regulations issued by them. When, however, we turn to the power of our federal courts to hold void the acts of Congress, or of the state courts to refuse recognition to the acts of the legislatures of their respective states, the question is quite another one. Here we have the exercise by the judicial branch of a government to place its interpretation of the power granted by a written constitution above the interpretation which the legislative branch of that same government has given it. In all countries other than our own the legislative interpretation is recognized as decisive.

This characteristic American doctrine had received a certain degree of acceptance, though not without protest, in the courts of the states prior to 1803, but it was first in that year in the great case of Marbury *vs.* Madison (*see*) that the Supreme Court of the United States by its acceptance of it, and Chief Justice Marshall, by the opinion which he rendered in support of it, finally established the doctrine as a fundamental principle of American constitutional jurisprudence. It is true that Marshall's reasoning is defective in so far as it is based upon the idea that the judicial power necessarily exists in a government organized under a written constitution, but he is upon firm ground when he points out that the federal judicial power is extended to "all cases, in law or equity, arising under the Constitution," and that in the exercise of this jurisdiction, thus specifically given, it is necessary that in cases involving conflicts between statutory and constitutional provisions, the courts should give effect to the Constitution under which they are organized and which is declared, in its own terms, to be the supreme law of the land.

Expediency and Nature of Judicial Control over Legislation.—The expediency of giving this power to the courts is one that is, of course, open to discussion. That it is a tremendous power there can be no doubt. As said by Bishop Hoadly years before our Constitution was adopted, "whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes, and not the person who first wrote or spoke them." It would seem clear that by training, by tenure of office, and by the character of the functions which they perform, the judges of the federal Supreme Court and of the highest courts of the states are less likely to be hurried on, under the pressure of passion or of temporary exigency, to a violation of the spirit, or to such a strained construction of the language of the Constitution as will deprive that instrument of its true restraining character. But, upon the other hand, there is the danger, which not a few persons think has in some instances become a reality, that the judges, not being in close touch with or responsible to public opinion, will assume an unnecessarily strict or biased attitude toward the constitutional powers of the legislature, and especially towards those relating to what is known as the police functions of the state. In general, however, it is to be said that the courts, in this control over legislation, have, by the rules which they have laid down for themselves with reference to its exercise, kept their authority within just and expedient limits.

In the first place they have, in the great majority of cases, guided their judgments by the rule that every reasonable presumption shall be in favor of the validity of a legislative act. Thus in one case the Supreme Court says, "a decent respect for a coördinate branch of the Federal Government demands that the judiciary should presume, until the contrary is clearly shown, that there has been no transgression of power by Congress, all the members of which act under the obligation of the oath of fidelity to the Constitution." And in another case the same court says: "Every possible assumption is in favor of the validity of a statute and this continues until the contrary is shown beyond a rational doubt." Again, in further limitations of their power, the courts, when it has been possible for them to do so without resorting to too strained an interpretation of the language used, have given to statutes meanings that will bring them within the constitutional powers of the legislatures enacting them. Still further, they have not permitted the unconstitutionality of a single provision of a statute which is separable from the other provisions to invalidate the entire act. They have consistently declined to question the motives of legislatures or the expediency of the legislative measures submitted to their judgment. And, finally, it is to be observed, that the courts will pass upon the constitutionality of a legislative act only as incidental to the decisions of cases brought before them, and then only if the cases may not be decided upon any other ground. The courts will not, in other words, entertain jurisdic-

tion for the decision of merely moot questions of constitutionality. Theirs is not a general revisionary authority over legislation, but a judicial power in the exercise of which, however, it often becomes necessary to determine whether legislative acts set up as legal grounds of action or of defense are to be accepted as such.

The general principle is that a law held void, because unconstitutional, is as though it had never been. It is declared never to have been a law, and hence that no legal rights can be claimed under it. If, however, by a later decision, the court reverses its former opinion, and upholds the law, it is considered as having been in force and valid from the time of its enactment. In practice, as a matter of justice and expediency, these principles have at times been departed from, but in general the rule is as stated.

See CASES, SIGNIFICANCE OF IN INTERNATIONAL LAW; CONSTITUTIONS, CLASSIFIED; COURTS AND UNCONSTITUTIONAL LEGISLATION; UNITED STATES AS A FEDERAL STATE.

References: J. B. Thayer, *Legal Essays* (1908), ch. i, "The Origin and Scope of the Am. Doctrine of Constitutional Law"; W. W. Willoughby, *The Constitutional Law of the U. S.* (1911), chs. i, ii; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903); J. W. Burgess, *Pol. Sci. and Comparative Constitutional Law* (1903); A. V. Dicey, *The Law of the Constitution* (7th ed., 1908); B. Coxe, *Judicial Power and Unconstitutional Legislation* (1893). W. W. WILLOUGHBY.

LAW, CONTRACT LABOR. See CONTRACT LABOR LAW.

LAW, CRIMINAL. Common Law and Statutory Crimes.—Crimes are such either by common law (*see*) or by statute. The English colonists brought hither the common law of England so far as applicable to our conditions and this is law in nearly all of our states except as changed by statute. In all the states the criminal law is now largely regulated by statute. In a few, the common law as to crimes has been entirely superseded by statutory provisions, but even in these states resort is constantly had to the common law to determine the meaning of the terms used in the statutes. Inasmuch as there is no common law of the United States as a nation, the only crimes against the Federal Government are those specified in federal statutes (*see* LAW, ADMINISTRATION OF BY COURTS).

Kinds of Offense.—Crimes (*see*) are classified as treason (*see*), felonies and misdemeanors. Felonies include the graver offenses, such as murder, manslaughter, mayhem, rape, arson, burglary, robbery and larceny. Misdemeanors include offenses less grave. Just where the line is to be drawn between felonies and misdemeanors is now generally determined by the statutes of the several states. An unsuccessful attempt to commit a felony (*see*) or a misdemeanor or to induce another to commit a felony or a serious misdemeanor is a misdemeanor, as is likewise misprision (or concealment) of felony.

Intent.—To convict the accused it must be proved not only that he did or caused the criminal act, but also, save in certain minor offenses, that he had a "criminal intent." *Actus non facit reum nisi mens sit rea.* This criminal intent consists in actual intent or in criminal negligence. An insane person, if he cannot distinguish between right and wrong or in some states if he acts under an irresistable impulse, is not held. Voluntary drunkenness, however, is no excuse. A child under seven years of age cannot be convicted; one between the ages of seven and fourteen may be, if the state proves that he had sufficient discretion to understand the nature and quality of his act.

Affirmative Defenses.—An act criminal in its nature and intentionally committed, may nevertheless be justified or excused. Thus a warrant, legally issued, justifies the sheriff in executing or imprisoning a criminal. One may use force, sometimes even take life, in defending one's person or property or in protecting others or in preventing the commission of a felony.

Parties.—A "principal in the first degree" is one who commits a felony in person or through an innocent agent; a "principal in the second degree" is one who takes no active part in its commission but who is present and lends encouragement; an "accessory before the fact" is one who is not present at the commission of the felony but who procures or encourages another in its commission; an "accessory after the fact" is one who aids a felon in evading punishment. In treason and in misdemeanors all are principals.

Arrest and Commitment.—The first step in a criminal suit is usually the issuing of a warrant (*see*) by a magistrate after complaint made to him under oath, or after indictment (*see*) found or information (*see*) laid. The warrant authorizes the proper officer to arrest the accused, though an arrest may, under certain circumstances, be made without a warrant and even by a private person. The accused is taken as soon as possible after arrest before a magistrate or inferior court. Minor offenses may be tried immediately; in graver offenses, the accused, if the evidence *prima facie* indicates his guilt, is committed to jail or, except on a capital charge, may be released on bail (*see* BAIL, EXCESSIVE), to await the action of a higher court. Commitment is not designed as punishment, for by our law, contrary to the rules prevailing in countries under the civil law (*see* LAW, CIVIL), a man is presumed to be innocent until convicted; but solely to ensure the presence of the accused in

court to answer the charge. The prisoner has the right to consult with counsel (*see*) and friends and cannot be compelled to make disclosures against himself. The Federal Constitution provides (Amendment V) that no person shall be compelled in any criminal case to be a witness against himself; state constitutions contain similar provisions.

Arraignment and Plea.—The next step is the arraignment of the prisoner. He is brought before the court, the accusation is read to him, and he is required to plead thereto. If he plead guilty, sentence may be imposed without further proceedings; if he plead not guilty, the issue is tried by a petit jury (*see*); if he refuse to plead, a plea of not guilty is entered for him. Certain other pleas such as former jeopardy (*see*) are open to him. He may instead of pleading, demur to the indictment, that is, claim that the facts as charged do not constitute a crime, thereby raising a question of law which is determined by the court.

Trial.—The rules of evidence applied in the trial of civil cases are, in general, applicable in criminal trials. A few, however, are peculiar to criminal suits. A voluntary confession (*see*) is admissible as evidence against the defendant, but a forced confession is not; he cannot be compelled to testify against himself, though statutes have changed the common law rule forbidding him to testify in his own behalf. He may offer evidence of good character, which the state may rebut by evidence that his character is bad. On a trial for homicide the dying declarations of the victim, although hearsay, are admissible. In criminal cases the rule is that the prosecution must affirmatively establish the guilt of the defendant beyond a reasonable doubt (*see*). Circumstanial evidence, if sufficiently convincing may convict. The defendant when acquitted is at once set free; if convicted he may move to arrest judgment or for a new trial. If such motions are not made, or, being made, are overruled, the court pronounces sentence. The defendant may carry his case to an appellate court on a point of law by appeal (*see*) or by writ of error (*see*). If the lower court has made an error of law to the prejudice of the defendant, the judgment will be reversed and proceedings must be begun anew in the lower court at the point where the error was made.

See JURISPRUDENCE; JURY, GRAND; JURY, PETIT; LAW, COMMON; TRIALS.

References: J. W. May, *The Law of Crimes* (3rd ed., 1905); J. P. Bishop, *New Commentaries on the Criminal Law* (1892); E. McClain, *Treatise on the Criminal Law* (1897); J. H. Beale, Jr., *Criminal Pleading and Practice* (1899).

A. W. SCOTT.

LAW, DUE PROCESS OF. See DUE PROCESS OF LAW.

LAW, EX POST FACTO. See EX POST FACTO LAW.

LAW, FUNDAMENTAL. This term is commonly used as synonymous with constitutional law when that law is regarded as furnishing the legal basis upon which is founded all other laws which are accepted as valid by the courts. At times, however, the phrase is given a moral rather than a legal meaning, and used to designate those underlying principles of right and justice which give ethical validity to all laws and to all authorities, public and private. See LAW, CONSTITUTIONAL, AMERICAN.

W. W. W.

LAW, INTERNATIONAL. See under INTERNATIONAL LAW.

LAW, INTERSTATE. See INTERSTATE LAW AND RELATIONS.

LAW, MARTIAL. See MARTIAL LAW.

LAW, MILITARY. See MILITARY LAW.

LAW OF NATURE. The state of nature before the establishment of government had, according to some publicists, a law of nature to govern it. This law of nature was differently described; but the American theory and law have probably been chiefly influenced by the idea presented by Locke (*Two Treatises of Government*, Book II, Sec. 6). This law of nature "obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions." See NATURAL RIGHTS; SOCIAL COMPACT THEORY.

A. C. McL.

LAW OF THE LAND. This phrase is used in Magna Charta and appears in American constitutional law as of practically the same significance as due process of law (*see*). Magna Charta declared that "no free man shall be taken, or imprisoned, or disseized, or outlawed, or banished, or any ways destroyed, nor will the king pass upon him or commit him to prison, unless by the judgment of his peers or the law of the land." In his argument in the Dartmouth College Case (*see*) Webster said:

> By the law of the land is most clearly intended the general law—a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society.

The Constitution of the United States says that "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land" (Art. VI, ¶ 2). This clause was doubtless

inserted as a means of keeping the states from passing and enforcing laws in disregard of the Constitution, laws and treaties of the United States, for in the same clause it is said that the judges in every state shall be bound thereby. It is noteworthy that the Constitution itself is here declared to be law, *i. e.*, enforceable in courts.

Any law or treaty, to be valid, must not be contrary to the Constitution. A law of Congress, however, will be valid even though in conflict with a previous treaty; a treaty will be valid even though in conflict with a law previously passed; "the one last in point of time must control." See DUE PROCESS OF LAW; LAW, CONSTITUTIONAL, AMERICAN. References: T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 31, 32, 241–243. A. C. McL.

LAW, PARLIAMENTARY. See PARLIAMENTARY LAW.

LAW, PRIZE, AND COURTS. See PRIZE LAW AND COURTS.

LAW, SANCTION OF THE. See SANCTION OF THE LAW.

LAWS, CONFLICT OF. See CONFLICT OF LAWS.

LAYING PIPES. A phrase applying to the laying of plans to secure fraudulent votes or accomplish any political undertaking through underhand means. It also signifies the forming of any cautious or secret plans for winning an election. It was, perhaps, first used in 1848 with reference to a scheme for the importation of voters into New York from Philadelphia. O. C. H.

LEADER OF THE HOUSE. The leader of the House is that member of the majority party who generally speaks for the party on the floor of the House. He is often called the majority leader, to distinguish him from the floor leader of the opposition party, commonly called the minority leader. The latter is customarily the candidate of the minority for the speakership, and the former, until March 19, 1910, was generally the speaker's most trusted lieutenant on the committee on rules. Since the opening of the Sixty-second Congress the chairman of the committee on ways and means has been the leader of the House. Although the leadership of the House is generally fixed for the life of a Congress, the chosen majority leader is not always in charge of the floor. The actual floor leadership may be vested in the chairman of the committee from which the measure under discussion by the House has been reported. Floor leadership carries with it control of the time allotted for debate (*see* PREVIOUS QUESTION), either under the hour rule (*see*) or under a special order reported by the committee on rules for a particular measure (*see* RULES OF CONGRESS). In the latter case the time apportioned to the minority is controlled by the minority leader, or by the ranking minority member of the reporting committee, or by some other recognized leader of the opposition to the measure. See PARLIAMENTARY LAW; PARTY ORGANIZATION IN LEGISLATIVE BODIES; RULES OF CONGRESS; SPEAKER OF THE HOUSE. References: S. S. Cox, *Three Decades* (1885); J. G. Blaine, *Twenty Years in Congress* (1884–1886). A. N. H.

LEARNED SOCIETIES. Most learned societies in the United States like most charitable and educational institutions, are private bodies, corporate or unincorporated, and not subject in their collective capacity to governmental regulation. When incorporated, they are subject to the limitations of their special charters, or the general act under which they are organized. A frequent and sometimes very inconvenient restriction is on the amount of property which they may hold. Such societies come under exemptions of taxation granted to philanthropic and benevolent organizations.

A modern type of learned society is brought into direct relation with the state, through performing a service for which public appropriations are made. The most important are state historical societies of which those in Wisconsin, Iowa, and Mississippi are examples. The first of these is made up of members chosen by the society, paying a small annual fee; but its library is housed in a magnificent building constructed by the state, which makes annual appropriation for its expenses. In effect, the library, which is but a short distance from the state capitol, is the state library, and the secretary of the society is the state librarian. The secretary of the Iowa State Historical Society is editor of various state compilations, including a reprint of the governor's messages. The secretary of the Mississippi Historical Society receives an annual grant from the state as editor of the publications of that society.

A few national organizations, particularly the National Academy of Sciences (chartered 1863) and the American Historical Association (1884) have charters from the Federal Government. The annual report of the latter Association goes to the Smithsonian Institution, and is there printed at the government expense, as a contribution of the government to historical literature.

Legislative grants are occasionally made to colleges and other institutions. The legislature of Massachusetts, besides its early gifts to Harvard College, appropriated money under the influence of Louis Agassiz for a museum of comparative zoology; and in 1912 voted $100,000, which is expected to be repeated for

several years to come, for the benefit of the Massachusetts Institute of Technology. Most such grants of public money, however, go only to state institutions.

See EDUCATION AS A FUNCTION OF GOVERNMENT; LIBRARIES, PUBLIC; MUSEUMS, PUBLIC.

References: Carnegie Institution, *Publications;* various societies, *Reports;* list of societies in Channing, Hart and Turner, *Guide to American History* (1912), § 45; Carnegie Institution, *Handbook of Learned Societies* (1908). ALBERT BUSHNELL HART.

LECOMPTON CONSTITUTION. See ANTI-LECOMPTON DEMOCRATS; KANSAS; KANSAS STRUGGLE; LAW AND ORDER PARTY; SLAVERY CONTROVERSY.

LEE, ROBERT EDWARD. Robert E. Lee was born in Stratford, Westmoreland County, Virginia, January 19, 1807, and died at Lexington, Virginia, October 12, 1870. A son of "Light Horse Harry" Lee, he was connected with Revolutionary tradition and he naturally chose a military career; he was sent to West Point, where he made an extraordinary record as a student, graduating in 1829 at the head of his class. Two years later he married Mary Custis, a great granddaughter of Mrs. Washington, and became proprietor of the Arlington estate. He rose gradually to the rank of captain in the regular army, rendering brilliant service in the Mexican War and was at its close pronounced one of the best officers in the country. From 1852 to 1855 he was superintendent of the military academy at West Point, and from 1855 to 1860 he was on the southwestern frontier. He lamented the secession movement but joined the Virginia forces in April, 1861, and speedily rose to the rank of general in the Confederate army. In June, 1862, he took command of the troops around Richmond, which were later organized as the army of Northern Virginia. With this army he fought most of the great battles of the war in the east, surrendering only a remnant of it at Appomattox, April 9, 1865. No general on either side won a higher reputation either as a soldier or as a man. At the close of hostilities he urged upon the South the quiet acceptation of defeat and submission to the federal power, while he set an example by taking the presidency of Washington College. He was more than successful in his new vocation and under his administration the school prospered as never before and at his death its name became Washington and Lee University. See CIVIL WAR, INFLUENCE OF, ON AMERICAN GOVERNMENT; CONFEDERATE STATES; VIRGINIA; WARS OF THE UNITED STATES.

References: R. E. Lee, *Recollections and Letters of General R. E. Lee* (1904); H. A. White, *Robert E. Lee and the Southern Confederacy* (1897); G. Bradford, Jr., *Lee, the American* (1912). W. E. D.

LEGAL PROCEDURE, PROPOSED REFORM OF. Criminal law has not kept pace with the progress of the country: it is cumbersome and antiquated because it attaches undue importance to technicalities and tends to sacrifice substantial justice to form. Among the reforms that have been advocated by many bar associations and legal writers are the following: greater promptness in starting trials, greater simplicity in the framing of indictments, bestowal on the prosecuting attorney of the power to amend defective indictments during the trial when it can be done without injustice; abolition of the grand jury and the substitution of prosecution upon information except in capital cases; abolition of the rule which disqualifies jurors who have formed opinions on hearsay evidence or newspaper report, except when their opinions are fixed; reduction in the number of peremptory challenges allowed the accused; reduction in the number of persons and classes now exempt from jury service; simplification of pleading; prohibition of protracted examinations and controversies concerning the admission of evidence; extension of the power of the judge so as to include the right to overrule, finally, objections concerning the admission of evidence —subject to review by a higher court only in case of abuse of discretion; authority of the judge to sum up the evidence for the jury and comment on its weight, and, in general, to exercise a larger power of control over the trial such as judges enjoyed at common law and now enjoy in England; right of the prosecuting attorney to comment on the failure of the accused to testify in his own behalf; modification of the rules in regard to double jeopardy and incriminating testimony; abolition of the unanimity requirement for verdicts except in capital cases; modification of the rule of reasonable doubt, abolition of the rule of presumed prejudice in the case of harmless errors of procedure; restriction of the present wide latitude of appeal; and prohibition of reversals by the higher courts unless it can be shown that the cause of the accused has been prejudiced by the error or defect complained of.

Justice demands that in the administration of the law its processes should not be allowed to become a game between contending counsel, but that cases should be determined finally and solely with regard to their merits. Now that the old severity of the criminal code has disappeared the present procedure is to a large extent out of harmony with modern conditions and should be changed in the interest of social security. A few states—notably New York, Oklahoma, and Wisconsin—have prohibited reversals for mere technical error, and in 1911 Congress passed a similar law for the federal courts.

See LAW, CRIMINAL; TRIALS.

References: R. Pound, "Dissatisfaction with the Administration of Justice" in Am. Bar

Assoc., *Reports* (1906), Pt. I, 395, "Report of Committee E" in *Journal of Am. Institute of Criminal Law*, I (1910); W. P. Lawler, "Criminal Law and Procedure," in *ibid*, I (1911), 584–594; M. C. Sloss, "Reform of Criminal Procedure" in *ibid*, I (1911), 705–717; *Am. Year Book, 1911*, 173, 176, i, *ibid, 1912*, 233.

J. W. GARNER.

LEGAL RIGHTS OF PUPILS IN SCHOOLS. See PUPILS IN SCHOOL, LEGAL RIGHTS OF.

LEGAL RIGHTS OF TEACHERS IN PUBLIC SCHOOLS. See SCHOOLS, PUBLIC, LEGAL RIGHTS OF TEACHERS IN.

LEGAL TENDER. This term refers to the kinds of money which by statutory enactment may be used in payment of a monetary obligation. A commodity, or paper money, or coin may be so designated. See LEGAL TENDER CONTROVERSY; MONEY, THEORY OF.

D. F. D.

LEGAL TENDER CASES. [Knox *vs.* Lee and Parker *vs.* Davis (1871) 12 *Wall.* 457]. The decision by the Supreme Court of the United States in one opinion in the specific cases here referred to is one of three decisions relating to the power of Congress to provide for the issuing of paper currency which shall be legal tender for private debts whether contracted after or before the enactment of the legislation providing for such currency; and the three decisions should properly be considered together.

In the case of Hepburn *vs.* Griswold [(1870) 8 *Wall.* 603], it was held, after full consideration, that under none of its express powers did Congress have authority by implication or otherwise to provide for the issuance of treasury notes (greenbacks) which should be legal tender for private debts already contracted. When this decision was rendered the Supreme Court of the United States consisted of eight justices, five of whom concurred in the decision, the others dissenting. But Congress had already provided for the appointment of an additional justice and one of the justices who had participated in the decision of the case in conference (voting with the majority) had resigned before the decision of the court was announced; and after the filling of these two places by appointment and confirmation, increasing the membership of the court to nine, other cases were submitted involving the same question, and a majority of the members of the court (the chief justice and three associate justices dissenting) overruled the decision previously announced in Hepburn *vs.* Griswold, and upheld the constitutionality of the statute, making treasury notes legal tender for private debts which were in existence prior to the enactment of the statute. This decision was rendered in the cases which are specifically reported as *Legal Tender Cases*. To some extent the majority of the court supported their conclusion by the argument that the legal tender acts were valid as a war measure, but subsequently, in the case of Juilliard *vs.* Greenman [reported under the title of *Legal Tender Case*, 110 *U. S.* 421 (1884)] the whole subject was reviewed with reference to the validity of a statute passed after the conclusion of the war authorizing the issuance of legal tender treasury notes, and it was held with only one dissent that the statute was constitutional, being within the power expressly conferred upon Congress to regulate the currency, emphasis being placed upon the fact that Congress is the legislature of a sovereign nation.

The objection which would have been valid as against similar state legislation that the obligation of contracts was thereby impaired was met by the proposition that Congress is not prohibited in the Federal Constitution from impairing the obligation of contracts.

See CONTRACT, IMPAIRMENT OF; GREENBACKS; LEGAL TENDER CONTROVERSY.

References: As to the history and relations of the three decisions above referred to, see J. B. Thayer, "Legal Tender" in *Harv. Law. Rev.*, I (1887–8), 73; E. J. James, "The Legal Tender Decisions" in Am. Econ. Assoc., *Publications*, III (1889), 49; H. L. Carson, *History of the Supreme Court* (1891), 442–457.

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LEGAL TENDER, CONSTITUTIONAL DISCUSSION OF. The constitutional right of Congress to make the treasury notes, authorized by the act of February 25, 1862, and by subsequent statutes, a legal tender, was denied by many persons at the time of legislation. Cases were early brought before the courts. In 1868 it was held by the Supreme Court in Lane County *vs.* Oregon (7 *Wall.* 71) that the notes were not legal tender for state taxes; and in Bronson *vs.* Rodes (7 *Wall.* 228) that they were not legal tender in settlement of contracts specifically calling for payment of specie.

Legal Tenders Invalidated.—The broader question of the right of Congress to force notes upon individuals in their private transactions was brought before the Kentucky state court of appeals, and decided adversely in the case of Griswold *vs.* Hepburn (8 *Ken.* 603). An appeal was taken to the Supreme Court of the United States. The question at issue, however, was limited in its scope. The defendant, in 1860, executed a promissory note on which payment was due February 20, 1862, five days before the passage of the first legal tender act. Payment was defaulted, and in 1864 suit being brought, the payment of the note was offered in United States notes but refused by the plaintiff as not a proper satisfaction of the indebtedness. This position was upheld by the Supreme Court (Hepburn *vs.*

Griswold, 8 *Wall.* 603), in 1870, by five to three (one vacancy). The court decision prepared by Chief Justice Chase, who had been Secretary of the Treasury and favored the act when passed, held that the act applied to pre-existing contracts, but that Congress in so legislating exceeded its constitutional rights. The making of notes legal tender for such purposes was not "necessary and proper" for carrying into execution governmental power; neither the right to coin money nor to issue notes implied the right to make the notes legal tender. The dissenting opinion interpreted the Constitution broadly, giving Congress the right to select its agencies for carrying out its powers; and the particular right at issue was justified as incident to the power to borrow money.

Legal Tenders Held Constitutional.—(Knox *vs.* Lee). A second case, originating in Massachusetts, in which the state court upheld a payment by notes instead of coin, came before the Supreme Court in 1870, and was decided in May, 1871 (12 *Wall.* 457). This decision was a reversal of the previous opinion; two new justices had taken office, and joined in the minority with the three judges in the Hepburn case, and constituted the majority. The court then held (Chief Justice and three others dissenting) that the question was the constitutional right of Congress to define the characteristics of money, and above all the right to exercise whatever powers were deemed necessary in time of war.

This speedy reversal of opinion by the highest court of the nation gave rise to an unfortunate controversy. Charges were made that the court had been "packed" by the selection of the two new judges, in order to secure the desired decision, whereby the Republican party would be upheld in its war policy, and commercial interests would not be disturbed by a sudden change in the accepted qualities of the current medium. The best historical judgment, however, is to the effect that, while the judges selected were known to be in general agreement with the principles of the Republican party, there was no prearranged understanding which would in the slightest degree justify the charge of a bargain.

The decision of 1871 did not cover the right of issue of legal tender notes in time of peace. The act of 1878 (May 31) provided that outstanding notes if received by the treasury should be cancelled, but that new issues should take their place. This right was passed upon by the Supreme Court in the case of Juilliard *vs.* Greenman in 1883 (*Legal Tender Cases,* 12 *Wall.* 457). There was now more general agreement; the Court with only one dissenting, declared that Congress might issue legal tender notes not only in time of war but also in time of peace, as an incident to the right of borrowing; Congress had also the right to regulate coinage and thereby to legislate on currency in all its details; the decision also includes the principle that Congress had the right, in the exercise of sovereign power commonly used by governments when the Constitution was framed, to issue paper money.

See CONTRACT, IMPAIRMENT OF; CURRENCY; GREENBACK LABOR PARTY; GREENBACKS; PAPER MONEY IN THE U. S.; TREASURY NOTES.

References: J. J. Knox, *United States Notes* (1885); S. P. Breckinridge, *Legal Tender* (1903), 49–137; M. L. Muhlemann, *Monetary and Banking Systems* (1908), 39–45; D. R. Dewey, *Financial History of the United States* (1907), 359, bibliography; A. B. Hart, *Salmon P. Chase* (1899), 389–414.

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LEGAL TENDER CONTROVERSY

Legal Tender Issues.—No government paper money was given the legal tender quality in the United States until 1862. Owing to the needs of the treasury, suddenly imposed by the Civil War, it was deemed imperative to resort to a forced issue of treasury notes, as had been previously done in the War of 1812, the panic of 1837, the Mexican War of 1846, and the panic of 1857. But the emergency was now so great that an issue far in excess of previous legislation was proposed; and it was argued that this could not be successful unless the legal tender quality was attached to the notes.

By the act of February 25, 1862, $150,000,000 treasury notes were authorized, and made legal tender except in customs payments to the Government, or interest payments on bonds by the Government. Further issues, each of an equal amount, were authorized July 11, 1862 and March 3, 1863. Certain short-time interest-bearing notes were also made legal tender, but as these were quickly funded after the Civil War, the controversy which subsequently engaged public interest was concerned exclusively with the greenbacks which had no definite date of redemption. To these issues there was bitter antagonism based on grounds of inexpediency and unconstitutional right. On the whole they were accepted as the exercises of a war power required to preserve the integrity of the nation.

When the war was over there was an insistent demand on the part of advocates of an early resumption of specie payments, that the legal tender notes be retired. For a brief

period it appeared that this view would meet with general approval; and in December, 1865, the House of Representatives almost unanimously pledged itself to a speedy contraction of the currency. This decision, however, did not reflect the real sentiment of the people. It was urged that contraction would introduce violent and disturbing changes which should be avoided until industry had adjusted itself to the needs of peace. The country should "grow up to specie payments"; the commercial needs and mining enterprises of the West, then under initial development, required the full amount of outstanding currency; and the stock of gold in the United States was small. As prices fell after the resumption of peace, these arguments became increasingly potent; an increase in currency, rather than a reduction was demanded. From these advocates the Greenback party emerged, advocating inflation.

In April, 1866, the Funding Act was passed, providing not only for the conversion of short-time securities into long-term bonds, but also for a slight contraction of United States notes. Authority was given for the retirement of $10,000,000 within six months and for not more than $4,000,000 in any one month thereafter. Congress thus ordered a policy of caution and delay. Unfortunately the English panic of 1866 affected credit conditions in this country, and gave fresh support to the advocates of abundant currency. McCulloch, Secretary of the Treasury, who had predicted that resumption would be attained by July 1, 1868, was forced to abandon the use of his discretionary power to retire treasury notes, and on February 4, 1868, Congress, by large majorities, voted against any further contraction. The volume of greenbacks therefore stood at $356,000,000, a reduction of only $44,000,000 since 1866.

In 1871 and 1872 Secretary Boutwell, ostensibly to relieve the money market, reissued some slight amounts of the treasury notes, to the gratification of inflationists and speculators. Prompt and sharp criticism, on the ground that an executive should not exercise such power without legislative control, led to their speedy retirement. But after the panic of 1873 there was a clamor for more government money. To this Secretary Richardson yielded and Congress, in 1874, passed a bill for a permanent increase to $400,000,000. This President Grant vetoed, on the ground that an increased circulation was a departure from the principles of finance and from congressional and party pledges. In 1875, Congress authorized resumption and placed the minimum limit of greenback circulation at $300,000,000.

Congressional action, however, did not check agitation. In 1876 dissatisfaction with the financial policy of the Government was so bitter that it became crystallized in a separate political organization known as the Greenback or National party, and later on the Greenback Labor party (*see*). It demanded not only the repeal of the resumption act, but the issue of legal tender notes convertible into securities bearing 3.65 per cent interest, and the suppression of bank notes. It was asserted that the issue of currency was a sovereign right, not to be delegated to corporations, but to be exercised solely by the Government; the credit of the Government was sufficient to maintain its value; whatever the law makes money, is money; bondholders and banks were denounced as oppressors of the people.

In 1876 the Greenback party polled 82,000 votes; and in 1878, over 1,000,000. This was the high water mark, and after 1884 the party did not figure in a national election. The inflationists found an outlet for their activity in the agitation for the free coinage of silver. Since the cessation of silver coinage in 1894 there have been occasional demands that the greenbacks be funded, but with the financial growth of the country the insignificance of the treasury issues as compared with the total volume of money, has seemed less and less important. The greenbacks are retained as a species of token money, convenient to the public, serviceable as reserves to banks, and retained in preference to an interest bearing obligation or a substitute which would entail additional taxation.

See Greenbacks; Legal Tender, Constitutional Discussion of; Paper Money in the United States; Treasury Notes.

References: W. D. Foulke, *Life of Oliver P. Morton* (1899), II, 74–102, 317–338; A. D. Noyes, *Thirty Years of American Finance* (1898), 21–56; E. N. Dingley, *Life of Nelson Dingley, Jr.* (1902), 134–156; D. R. Dewey, *Financial History of the U. S.* (1907), 378–382; A. B. Hart, *Salmon P. Chase* (1899), 389–414.

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LEGATIONS. The word "legations" is used in international law as the generic term for agencies by which a state is represented in foreign countries. The right of legation may be considered either as the right of the state to appoint diplomatic agents and to establish a legation in a foreign country, in which case the right is said to be active; or as the right of the foreign state to receive diplomatic representatives from other countries and to permit the establishment of a legation, when it is said to be passive. The right of representation is an established rule of international law, resulting from the necessity of intercourse between nations. The duty to receive the diplomatic representatives of a foreign state does not extend to the reception of permanent envoys, although in actual practice they are regularly received. A state has the right to determine for itself the individuals whom it wishes to send as its representatives; but on

the other hand, it is the undoubted right of the foreign state to refuse to receive a given individual who is objectionable to it. Hence it is usual for a state to communicate, in advance, the names of ambassadors and ministers whom it desires to appoint to the foreign country, and to receive formal assurance from the foreign state that the appointee will be *persona grata*. The right to foreign representation is a characteristic of sovereign states; hence protected states and states under the suzerainty of another, do not possess the right of diplomatic representation unless by agreement with the protecting state.

The requirements of international intercourse were met in the ancient world by special commissions or embassies for particular purposes. In the thirteenth century it became the custom, especially of Venice and of the Italian states, to establish permanent legations. By the end of the fifteenth century the larger states of Europe were permanently represented by diplomatic agents. After the Treaty of Westphalia in 1648, the system, which had gradually become general, may be said to have become universal. Certain small states, for reasons of domestic convenience, sometimes appoint the same representative to two or more countries; and at times several states unite in appointing a single representative to the same country.

See AMBASSADOR; DIPLOMACY AND DIPLOMATIC USAGE; ENVOY EXTRAORDINARY; EXTRATERRITORIALITY; and under DIPLOMATIC.

References: L. Oppenheim, *Int. Law* (1912), I, 437–481; J. B. Moore, *Digest of Int. Law* (1906), IV, §§ 623–695.

JAMES BROWN SCOTT.

LEGISLATION. Legislation in one of the most important sources of the law. Markby defines it as "the expressly declared will of the sovereign authority. When the sovereign authority declares its will in the form of a law, it is said to legislate; and this function of sovereignty is called legislation: the body which deliberates on the form and substance of such laws before they are promulgated is called the legislature." In the United States, Congress and the legislatures of the several states are legislative bodies of their respective sovereignties. In England, Parliament is the supreme legislative body. Legislation, however, may be delegated to subordinate legislative bodies whose acts are as truly legislation as the acts of the higher legislative bodies; thus the by-laws of municipal corporations are properly called legislation.

Law that has its source in legislation is properly known as enacted law, or as statute law, as opposed to the common law, or case law, the law laid down in the decisions of the courts. Blackstone and other writers have used the expressions written and unwritten law to denote this distinction. But this is inaccurate for much law that is not legislation is reduced to writing, *i. e.*, the decisions of the courts as embodied in bound volumes of official reports of judicial decisions in every state in the Union. Legislation as a source of law has the following characteristics: (1) Subject to the restrictions of a written constitution and to its interpretation by the courts, it is supreme. All law in conflict with it is abrogated. It is therefore, an indispensible instrument to legal growth and reform. (2) It can by way of anticipation make rules for cases which have not arisen, whereas case law is created in the very act of applying it. (3) Legislation as it appears in modern statutes is brief, comparatively clear, and easily accessible.

The two chief checks on the supremacy of legislation are: (1) Written constitutions such as obtain in the United States and in the several states; and the power of interpretation of statutes vested in the courts. If an act of legislature contravenes some provision of a written constitution it is the duty of the courts to declare it invalid. (2) Owing to the imperfections of language statutes cannot be entirely clear, nor can they interpret themselves. It is accordingly, the duty of the courts, as occasion arises in the presentation before them of cases involving the statutes, to declare the meaning of them, "and it is with the meaning declared by the courts, and with no other meaning, that they are imposed on the community as law" (Gray).

See EQUITY; JURISPRUDENCE; and under LAW.

References: J. C. Gray, *The Nature and Sources of the Law* (1909), ch. viii; W. Markby, *Elements of Law* (6th ed., 1905), ch. ii; T. E. Holland, *Jurisprudence* (10th ed., 1906), 73.

J. W.

LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES

Structure of the American Municipal Council.—The municipal legislature in American cities consists of an elective council commonly made up of a single chamber, but in many cases divided into two chambers. It has been estimated that, taking the country as a whole, about one-third of the cities follow the bicameral plan. Of the ten largest cities, New York, Chicago, Boston, Cleveland, Pittsburgh and San Francisco have a single-chamber council, while Philadelphia, St. Louis, Baltimore, and Buffalo have two chambers.

Bicameral System.—The introduction of the bicameral system in municipal organization came after the American Revolution and was due to the application of the so-termed federal analogy. Prior to the Revolution, the legislative organ of the colonial boroughs consisted of a single council only. The bicameral council was established in the expectation that it would serve as part of a system of checks and balances (*see*); its maintenance has usually been defended on the ground that single chambers are, in both state and city government, prone to hasty and ill-considered action, and that they are too easily controlled by some partisan or corporate influence for selfish ends. When a city has a two-chamber council, one branch is usually called the board of aldermen and the other the common council. Sometimes, however, other names are used for the upper branch; in Philadelphia it is called the Select Council, and in St. Louis the House of Delegates.

Size and Term.—In size both branches vary widely. At the head of the list is Philadelphia with forty-one members in one branch of its municipal council and one hundred and forty-nine in the other. The single chambers in New York and Chicago comprise seventy-nine and seventy members respectively, San Francisco has a single chamber of eighteen members, called the supervisors, and the Boston city council contains only nine members. Members of the upper branch of the city council are usually elected for a two or four-year term; members of the lower branch in most cases are chosen for a shorter period, commonly one or two years. The two-year term is perhaps the more common except in the cities of New England, where the practice of electing councilmen annually is still strongly maintained. Where terms are short, reëlections are common; but it is seldom that councilors serve over six or eight years at the most. In this respect the traditions of American cities differ very widely from those of English municipalities, where ten or even twenty years of service at the council board is not worthy of any comment.

Qualifications of Councillors.—As a general rule any qualified voter may become a candidate for election to either branch of the city council, but in some cases an additional residence requirement is imposed. In a few cities it is stipulated that aldermen and councillors shall be at least twenty-five years of age, and in a few others it is required that they shall have been residents of the city for four or five years. In addition, many city charters prohibit councillors from holding any other public office or from being pecuniarily interested in any municipal contract. No American city exacts a property qualification from councillors nor is previous experience in public office either required or expected from those who seek election to the municipal council. The common council represents about the lowest rung of the ladder in American public life. It is where many men have begun their political careers, but in more recent years membership in the council has not been regarded as affording any amount of useful training for subsequent service. In the larger cities municipal councils attract very few men of ability or business capacity. Very rarely is it true that any considerable percentage of the councillors own property; on the contrary, it would probably be found that in most large American cities the majority of the councillors contribute nothing but an annual poll tax to the city treasury.

Salaries.—Most cities give members of the council an annual salary. In New York an alderman receives $2000 a year; in Boston councillors are paid $1500; in smaller cities the remuneration is $1000 and less. Alone among the larger cities Philadelphia and Pittsburgh give their municpal legislators no remuneration, but a like policy is pursued in many of the smaller municipalities. The calibre of councilmen seems to be, however, in no way related to the salaries paid. When a substantial remuneration is given, places at the council board are frequently sought by men whose capabilities would not command any such return in private employment. On the other hand, when cities pay only a nominal stipend, or nothing at all, men who have large business interests to engage their attention are frequently deterred from making the sacrifice which gratuitous service in the council demands.

Methods of Selection.—There are three systems of selecting members of municipal councils: election by wards, election at large, and election by a combination of both these methods. With the single-chamber council the first of these three methods is the one most commonly used, but where the city council has two branches, it is almost an invariable practice to pursue different methods in the election of each branch. Under the system of ward election, the city is apportioned into a number of districts, each of which chooses one, two, or three councillors. Chicago, for example, elects its seventy councilmen two from each of the thirty-five wards; in Philadelphia the one hundred and forty-nine members of the common council are chosen from the forty-one wards in the city, each ward having representation in proportion to its population. Boston and San Francisco are about the only large cities which elect all their councillors, numbering nine and eighteen respectively, on a general city ticket. Many smaller cities, however, elect the members of their common council in this way.

Ward and General Ticket Systems.—There has been much discussion concerning the relative methods of the ward and general ticket system of choosing municipal councillors, and

it is often alleged that the ward method of election has been primarily responsible for the mediocrity of the members chosen. It affords a standing incentive to the gerrymander (*see*), it makes possible the control of a majority of the council by a minority of the city voters, and it places an undue premium upon sectional interests. One thing, however, the ward system seems to have in its favor: it does secure representation of different geographical and political interests throughout the city. Election by general ticket, while it is likely to secure a choice of better men, as councillors, does not afford an adequate guarantee that all sections and interests shall be represented. Under that system it is not only possible, but even probable, that successful candidates will come wholly from one political party if the municipal ballot bears party designations, as it usually does. When nominations are made by political conventions or caucuses, it can usually be arranged to give the different sections of the city due recognition on the slates of candidates; but where nominations are made by direct primaries or by petition, this cannot be so arranged and some districts are accordingly likely to be left without representation at all. In Boston some years ago, when the thirteen members of the board of aldermen were elected at large, one political party regularly managed to capture the whole board until the legislature intervened and required by statute that voters should mark their ballots for not more than seven candidates, although thirteen were to be chosen. Thenceforth the majority party in the city was assured of seven aldermen, while the minority party regularly secured the remaining six. The board was always so closely balanced politically that deadlocks were frequent and the city's business was greatly obstructed in consequence. Some similar arrangements for securing minority representation have at various times been tried in other cities, notably in New York and Chicago, but in no sense have they proved satisfactory. The objections to the system of electing councillors at large, however, simply beg the question as to whether either geographical or political representation was something to be desired. Can any policy which is admittedly to the advantage of the whole body of citizens be determined by the voters of any one neighborhood, party, race, or creed? The ward system rests upon the premise that political parties as such have a necessary place in municipal affairs and that their interests should be duly regarded in the composition of a city government. This doctrine cannot be supported either by reason or experience, and it is out of harmony with the present-day drift in public sentiment. Those American cities which have reorganized their administrative arrangements during the last ten years have, without exception, tried to lessen the recognition afforded to political parties or to particular districts of the city. The open primary, the system of nomination by petition, the removal of party designations from the ballot, the scheme of preferential voting, are all important steps in this direction. With the adoption of these various features, the chief props of the ward system disappear.

Nomination of Councillors.—Candidates for election to the council are nominated in a variety of ways. In a few cities the ward or city caucus still remains. In some others the party convention chooses candidates for election at large. Many cities have replaced the caucus and the convention by the party primary, each party holding its own primary and choosing its own official candidates. In Massachusetts, except Boston, the joint party primary is in vogue, both parties selecting their candidates on the same day. During recent years a number of cities, particularly those which have adopted the commission type of government, have established the non-partisan primary, at which candidates are selected without regard to their affiliations. In Boston candidates for election to the city council are placed in nomination by petitions bearing the signatures of at least five thousand qualified voters. The merits and faults of these various plans of nomination have been widely discussed and, while the drift of opinion seems to be very strongly against the caucus and convention, there is no consensus of opinion as to the superiority of any one of the remaining methods over the others. The elections are conducted everywhere by secret ballot and in almost all American cities the so-termed Australian ballot is used. In most cases the ballot bears after the name of each candidate his party designation, thus placing a marked premium on partisan regularity among the voters. A plurality of votes is usually sufficient to elect a councilman, and as there are almost invariably more than two candidates for the same vacancy, the successful candidate is commonly chosen by a minority of the voters. Council elections may be voided on the usual grounds, but the council is in practically every case the sole judge of the qualifications of its own members and decides among other things whether or not a councilman has been fairly elected. Being itself a partisan body, the council is quite apt to give its decision on this matter upon partisan grounds and not upon the real merits of the case.

Organization and Procedure of Councils.—In organization and procedure municipal councils are much the same throughout the United States. Regular meetings are held at the city hall, weekly in the larger cities, fortnightly in the smaller. Special meetings may be called whenever a certain number of members ask for it. In a few cities, notably in Chicago and Providence, the mayor presides at all council

meetings, but as a rule the council or each branch of it selects its own presiding officer. This is done at the first meeting after an election, and a clear majority of votes is usually necessary. Hence the selection of a presiding officer is not infrequently delayed for weeks or even months through the inability of a majority of the members to agree upon a choice. Where party discipline is good the selection is virtually made at a preliminary caucus by the members of the majority party in the council. The presiding officers usually hold office for a single year. The council, furthermore, determines its own rules of procedure and usually adopts a set of rules at its opening meeting. Ordinarily the rules of the preceding year are readopted with such incidental changes as may be deemed desirable. These rules are not rigid and may usually be suspended by a two-thirds vote.

Council Committees.—Most of the council's routine work is performed by standing committees, and where the council has two branches these committees are made up of members from both chambers. In the larger cities the council has from a dozen to thirty committees, each with a membership of from five to fifteen members. Among these committees the most important are those which deal with appropriations, public works, streets, police, fire protection, and public health. Unlike its English prototype the American council committee has little or no decisive influence upon the ultimate action of the municipal authorities. Recommendations of committees carry slight weight with American councils and are readily brushed aside whenever a majority of the councillors differ from the committeemen. In fact, the committee system, as it operates in American cities, serves only to foster haphazard and unbusinesslike handling of public affairs. Councils neither study matters themselves nor pay due heed to the recommendations of those who have studied them. The frequency with which a committee's conclusions are set aside has tended to deprive committeemen of all proper sense of final responsibility and has led them to do their important work in a slipshod and half-hearted way. Large councils must, of course, do most of their work through standing committees; but if the judgment of councillors who have given a matter no thought is to be held quite as reliable as that of those to whom the question has been committed for study, a committee system will avail little to secure enlightened action. The propaganda for smaller councils derives much of its support from the feeling that the committee system, as it seems invariably to work out in American cities, can never be made to serve the cause of efficient administration.

General Legislative Powers.—The powers of the city council seem almost to defy any attempt at concise enumeration. For the most part, except in those cities which have commission government, they represent a residuum, that is to say the mere remnants of a once comprehensive authority which has been badly shorn during the last fifty years. Such authority as remains may, however, be conveniently divided into, first, legislative, and, second, administrative powers. The legislative powers exercised by city councils extend, as a rule, to the following:

(1) *Matters relating to the structure of city government not provided for in the city charter.*—Charter provisions usually determine the methods of selecting all city officers, their terms of service, and their compensation. But where the charter fails to prescribe the mode and conditions of appointments, the council is usually competent to make the necessary arrangements by ordinances.

(2) *The exercise of the local police power.*—Within this somewhat broad field is included the right to enact suitable ordinances for the protection of life and property, as well as for the preservation of the public health and morals. Ordinances relating to traffic in the streets, fire limits and fire regulations, building laws, sanitary rules, ordinances providing for the inspection of milk and food products or for the standardizing of weights and measures, rules governing the conduct of theaters and other places of amusement; all these are examples of the exercise of local police power. Authority to make some of these regulations has been in a few cities taken away from the council and entrusted to special administrative boards. But in most cases the council still retains and exercises the police powers of the city.

(3) *Powers connected with municipal finance.*—The council in most cities determines the annual tax rate although it does not decide what property may be assessed for taxation. This is a matter determined by state law. The council also as a rule makes such exemptions or abatements as are permitted by the statutes. It likewise makes the annual appropriations whether in the form of an annual budget or in the form of individual resolutions. Occasionally the annual budget is drawn up and laid before the council by one of its own committees, but more often this is done by the mayor or by a board of estimate and apportionment. However the appropriations may originate, they can become effective only with the consent of the council, although the charters of some cities place restrictions upon the right of the council to increase any appropriation proposals laid before it. In New York, for example, changes in the budget by way of increase can be made only by a three-fifths vote of the council. In Boston the city council may reduce the estimates laid before it by the mayor, but may in no case add to them. The city council, moreover, is an important factor in the exercise of the city's

borrowing powers; for all loans, whether temporary or permanent, its assent is invariably required.

(4) *Powers relating to public utilities and municipal services.*—In most cities the municipal council has authority, under the strict limitations prescribed by state law, to enfranchise public service corporations for operations within the limits of the municipality. No municipal prerogative has been more grossly abused than this. As a franchise-granting authority the city council has usually made its most serious errors. Hence it has come to pass that in many states the franchise-granting authority of the city councils has been subjected to such stringent limitations that it no longer can be said to be an important power. Sometimes this takes the form of constitutional or statutory enactments forbidding the council to grant franchises over a longer period than twenty or thirty years or provisions making all votes of the council relative to franchises subject to popular referendum. Sometimes, again, state legislatures have arrogated a part at least of the franchise-granting power to themselves and have exercised this directly. The rôle of the city council in this particular field has accordingly become much less important than it used to be. On the other hand, where the city itself owns and operates any public service such as water or lighting, the council usually retains the right to regulate by ordinance the terms and incidents of such service. In most cases the service itself is under the immediate management of some elective or appointive board which is not dependent upon the council; but the funds for maintaining the plant have to be provided by council concurrence, and this gives the latter body an important voice in the determination of all questions relating to the general management.

(5) *Miscellaneous Powers.*—In every city charter the ordinance power of the municipal council is extended to many matters which do not readily admit of simple classification, and in some cities the whole school system is almost directly under the council's control and not a dollar can be appropriated for educational purposes save by council action. In other cities the schools are under a separate board or committee which has its own powers to tax and to borrow or which is by state law guaranteed a certain share in the annual tax receipts. In many other departments of municipal administration, such as police, fire protection, sanitation, parks, and streets, the city council determines by ordinances the salaries and wages of department officials and employees, the hours of labor, and the respective duties of all those who have places on the city pay roll.

While the council has lost many important powers, it still retains shreds of jurisdiction over a considerable area and consequently the annual output of city ordinances is very large. The revised ordinances of Chicago make up two solid volumes of over a thousand pages each. Other cities are in this respect not far behind. There is no limit by law to the number of petty ordinances which the city council may enact, and there seems to be no limit fixed by public opinion. The courts have insisted that such ordinances shall be reasonable in motive, not oppressive in character, general in their application, consistent with the public policy of the state as expressed on the statute book, and not beyond the scope of the council's powers as set forth in the charter of the municipality. Judicial decisions have laid down these various principles with unequal degrees of strictness in different states, so that questions relating to the validity of any municipal ordinances can be determined only by a careful study of the laws and decisions of each locality.

Administrative Powers.—As a matter of political theory councils have no administrative powers, but as a matter of fact they do exercise authority which is distinctly administrative in nature and highly important in scope. In some cities the council still makes important appointments; in others its assent is necessary to appointments made by the mayor. It commonly has the right to require reports from city departments and may, through its committees, investigate any branch of the city's business. Through its power to refuse appropriations it can make its will felt in any department of the city's administrative service. But taken as a whole the powers of the council (except in cities governed under the commission plan) are not such as to give it a dominant influence in administrative matters. And the whole tendency seems to be to take away from the council even the few administrative powers which it still exercises.

See ALDERMAN; CITY AND THE STATE; CITY RECORD; COMMISSION SYSTEM OF CITY GOVERNMENT; LOCAL SELF-GOVERNMENT; MUNICIPAL GOVERNMENT IN THE UNITED STATES, ORGANIZATION OF; MUNICIPAL VETO OF STATE ACTS; REPRESENTATIVE GOVERNMENT; SALARIES OF PUBLIC OFFICIALS; SEPARATION OF POWERS; TAMMANY.

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LEGISLATION, BRITISH SYSTEM OF

Bills.—Bills in Parliament are grouped in three classes: (1) government bills; (2) private members' bills; (3) private bills (*see*). A government bill is a measure which has the approval of the Cabinet, and on which all members of the Cabinet are agreed. The more important government measures are announced in the speech from the throne at the opening of Parliament; and a government bill goes through its stages in the House of Commons in the time reserved for government business. For the divisions on a government bill the whips (*see*) summons all supporters of the government; for in the case of an important bill an adverse division might end the existence of the government. A government bill is drawn up by draftsmen in the permanent civil service; and it is usually introduced to the House of Commons by the minister at the head of the department of state concerned with the subject of the bill. A bill for an amendment of the poor law or of the municipal code would originate with the Local Government Board; a railway bill with the Board of Trade; and a bill affecting penal establishments with the Home Office. Take as an example of government bills a measure for an amendment to the poor law; it would be drawn up by the parliamentary draftsmen of the Local Government Board, receive the approval of the Cabinet, and be introduced by the president of the Local Government Board, who would be in charge of it in all its stages in the House of Commons.

Readings.—Unless a bill be of more than ordinary importance, the first reading stage in brief, and little more than formal. Second reading is the critical stage. Principles and to some extent details are then explained by the minister in charge. Discussion is general; and if the principle of the bill is then accepted, only lack of time usually stands in the way of the passage of the measure. At this stage the minister in charge of the bill has the support of his colleagues of the Cabinet in making out the case for the measure. On the opposition side of the House the lead in discussion at second reading stage is taken by the member who filled the position held by the minister in charge of the bill when the opposition was last in office. The usual motion to bring about the rejection of a bill is that "it be read a second time this day six months." If second reading is agreed to, the bill, except it be a money bill, or unless the House otherwise order, goes to one of the four standing committees. Each of these committees is of sixty to eighty members. A bill may be sent to committee with or without instructions. If by order of the House there are special instructions they must be definite and limited, and must be such as enable the committee to do something which it would not otherwise be able to do without going outside the scope and frame work of the bill. The minister who introduced the bill is in charge of it before committee. After a bill has gone through committee it is reported by the chairman to the House. A motion is then made that the bill as amended be considered. The Speaker is in the chair, and there is much less freedom of discussion at report stage than in committee. Except the member in charge of a bill or a member who has moved an amendment, no one can speak more than once—as is the rule at second and third reading stages. If an amendment of a complicated character be adopted the bill may be recommitted. This reading is the final stage of a bill, and as at second reading a motion to reject is in order. After third reading the House orders that the clerk carry the bill to the Lords and desire their concurrence.

In the House of Lords the procedure is much the same as in the Commons, and when a bill has completed its stages there it is ready for the royal assent. Occasionally government bills of a minor character are introduced in the Lords. Except as regards money bills there is no hard and fast line as to the House in which a bill may originate; but most of the ministers at the head of departments of state are usually of the House of Commons, and in the case of important and contentious bills there are tactical advantages in introducing them in the House of Commons.

Private Member's Bills.—The stages of a private member's bill and the procedure generally are the same as on a government bill. Leave to introduce must be obtained, and many bills are read a first time each session; but the number of these bills that get as far as second reading becomes smaller each year, and it is seldom indeed that a private member's bill becomes law. Members who are in charge of these bills ballot for the few available days on which government business has not the right of way; and if successful the member has an opportunity of moving the second reading of his bill. It can be talked out or rejected at this stage; but even if it passes its second reading the chances of carrying it through its remaining stages in the House of Commons and through all its stages in the House of Lords are slender in the extreme unless the government takes it over and becomes responsible for its passage. Before 1867 a fair amount of legislation originated with private members. Increasing pressure of government business is continually diminishing the opportunities of private members; and today almost the only usefulness of private members' bills is

the opportunity that their introduction in the House of Commons affords for the education of public opinion, for testing the feeling of the House, and for pressing legislative proposals on the attention of the government.

Private Bills.—Private bills are measures by which, under carefully guarded conditions determined by standing orders of the two houses, statutory powers are conferred on municipalities, on dock and harbor boards, on railway and street car, gas and electric companies. These bills correspond to public utility charters in the United States. A private bill originates in a petition deposited in the private bill office of the House of Commons. Adequate local and general public notice must be given of a petition in order that memorials against it may be filed. Petitions and memorials go before examiners acting for the two Houses; and if the standing orders have been complied with, the petition is embodied in a bill which is read a first and a second time in the House of Commons and sent to a select committee. Before the committee counsel appear for and against the bill, and witnesses are examined on oath. The powers of the committee are partly judicial and partly legislative. From the committee the bill is reported to the House, where its remaining stages are similar to those of a government or a private member's bill.

See CABINET GOVERNMENT; HOUSE OF COMMONS; PARLIAMENT; PARTY GOVERNMENT IN GREAT BRITAIN.

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EDWARD PORRITT.

LEGISLATION, DIRECT

Early Examples.—Direct legislation, the initiative and the referendum are terms which found no place in the language of practical politics in America before 1890. Yet even in colonial days experience had offered something of precedent and analogy. Thus in the Plymouth colony, for years after the towns had begun to send deputies to their representative legislature, the "whole body of the freemen" continued to appear at the June court, and there made laws and repealed such of their representatives' enactments as "proved prejudicial to the whole." Long after this custom had lapsed because of the proved efficiency of the representative system, the difficulties of travel and the unwieldiness of the court, the freemen continued to express their will by instructions to their deputies. The voters' right to instruct their representatives in the legislature was expressly set forth in the bill of rights of the Massachusetts constitution (1780), and it was freely used, both before and after the Revolution. But, in contrast with modern direct legislation or with the working of "public opinion" laws, it is to be observed that such instructions were given not to the legislators in general and by the massed voters of the commonwealth, but to an individual deputy, by his own constituents, and ordinarily by the very town-meeting by which he was elected.

In 1778 the proposed "frame of government" was submitted to the voters of Massachusetts and rejected. Two years later the new constitution was submitted to popular vote, and adopted. Thus was set the precedent for what in America remained for more than a century the indigenous and almost exclusive form of direct legislation—the popular vote upon state constitutions and amendments thereto. Of the constitutions in force in 1911, only four went into effect without ratification by the people.—Mississippi, 1890; South Carolina, 1895; Delaware, 1897; Virginia, 1902 (*see* CONSTITUTION MAKING; CONSTITUTIONAL CONVENTION).

Public Opinion Bills.—A later form of direct legislation arose from the growing distrust of state legislatures. This manifested itself in clauses inserted in the newer constitutions requiring that legislative acts upon certain subjects such as the increasing of the state's bonded debt, or the sale of school lands should not go into effect unless ratified by popular vote (*see* CONSTITUTION MAKING; CONSTITUTIONS, STATE, LIMITATIONS IN). Later it became somewhat common for legislatures to attempt to shift responsibility upon perplexing measures by passing laws subject to approval by the people at the polls. But the courts put a stop to this practice, declaring that, in the absence of authorization by the constitution, it was an unwarranted delegation of legislative power. Of course, no such prohibition lies against the legislature's calling for a popular vote as a mere test of the people's wishes in regard to a given proposition (*see* LOCAL OPTION). Thus, the establishment of free schools was voted on in New York, 1849, and the granting of municipal suffrage to women, in Massachusetts, 1895. Such a quasi-referendum, though having no legal force as an "instruction," may have considerable weight with the legislature. In 1901 popular pressure secured the enactment in Illinois of a law which provides that by petition ten per cent of the registered voters may require the submission of a given proposal, as a "question of public policy," to the electorate of the entire

state. Delaware has passed a similar law, and such "public opinion bills" have been vigorously urged in several other states. In effect a vote, taken under such a law as that of Illinois, operates as an "advisory initiative." Its obvious intent is to bring pressure to bear upon the legislators to vote for the proposed measure under peril of the charge of disobedience to the "people's will," as evidenced in the popular vote. For reasons stated above, such a procedure finds no valid precedent in Massachusett's obsolete method of instructing representatives.

Ordinary Legislation by Initiative and Referendum.—South Dakota (*see*) in 1898, took the lead in introducing a comprehensive scheme of direct legislation, applicable not only to changes in the constitution but to ordinary laws as well. But Oregon's (*see*) system, put into operation by the constitutional amendment of 1902, is the one which has been most thoroughly tested, and which may best be presented as the type which is being followed by other states. On petition signed by legal voters equal in number to at least eight per cent of the number voting for justice of the supreme court at the preceding regular election, and duly filed, not less than four months before the date of the general election, with the secretary of state, he must place the proposed measure upon the ballot, and it becomes a part of the state's law if a majority of the votes cast upon that question are in its favor. Such is the initiative. The same law provided for the referendum. On petition of five per cent of the above number of voters, filed within ninety days after the adjournment of the legislature, any specified measure must be submitted to the people's verdict at the next general election. In 1906 it was provided that the referendum might be invoked not only upon entire laws, but also upon individual items or parts of laws. Provision for direct legislation, following in general this model, has been incorporated in the constitutions of the following states: South Dakota, 1898; Oregon, 1902; Nevada, 1905; Montana, 1906; Oklahoma, 1907; Maine, 1908; Missouri, 1908; Arkansas, 1910; Colorado, 1910; Arizona, 1911; California, 1911; New Mexico, 1911; North Dakota, 1911; Idaho, 1912; Ohio, 1912; Nebraska, 1912; Washington, 1912; Michigan, 1913. In many other states the initiative and referendum have been under discussion, and amendments providing for them are now (1914) awaiting the people's verdict in several states. In Illinois and Delaware, the "advisory initiative" is likely soon to lead to genuine direct legislation. New Jersey is experimenting with the initiative and referendum in cities.

Minor differences are found in the systems of the several states as to the number of petitioners necessary to secure the submission of a measure to the people either by initiative or referendum; as to the length of time during which the proposal must be before the people; as to the vote required to adopt it; and as to the process of dealing with emergency measures.

Percentage of Voters.—Direct legislation has met with most favor in the newer states of the west, though the recent accession of Maine and New Jersey to the ranks of the states which have adopted it, shows that the movement in its favor is making progress in more conservative sections. It is evident that communities differ markedly in their disposition toward it, and that experience in its use increases the voter's interest in it. In Massachusetts, from the adoption of her constitution, 1780, to 1907, 58 questions have been submitted for a *yes* or *no* vote by the entire electorate of the commonwealth. Of these 39 were answered in the affirmative and 19 in the negative. In contrast with the record in this conservative state, at the four general elections since direct legislation was introduced in Oregon, 1902, there have been submitted to her voters 64 questions, 32 of them on a single ballot, November 8, 1910. Of these 64 measures, 31 were adopted and 33 rejected. In the case of the 58 Massachusetts referenda, the aggregate vote upon the several measures, as compared with the vote cast at the same election for gubernatorial candidates, varied from 101.3 down to 3.3 per cent. In twelve instances the vote fell below 25 per cent of the gubernatorial vote; the average percentage of them all was only 54.4. On the other hand, on the 32 measures voted upon in Oregon, in 1910, the highest vote cast was 89.4 per cent of the aggregate vote for governor, but the lowest was 62.3 per cent of that aggregate.

Reasons.—The movement to secure the adoption of the initiative and referendum, which began to make itself felt after 1890, found its origin neither in abstract theorizing nor in ultra-democratic desire on the part of the voters to take power into their own hands for the pleasure of exercising it, but rather in a determined resolve to provide themselves with correctives for the bad work or the negligences of indifferent, irresponsible and boss-ruled legislatures. It is the anticipation of some of the most earnest advocates of the initiative and referendum that, as these devices were called into existence by defects in the representative assemblies, so, after the novelty has worn off, they will be rarely brought into requisition except where the legislature is proving scandalously unrepresentative.

The first consideration which has induced one state after another to adopt direct legislation is that through the referendum the people are enabled to annul ill-considered or pernicious legislation. Members of state legislatures are often selected not because of their exceptional competence to deliberate upon and determine matters of high concern to the state, but as pawns in the game of national politics. The

product of a legislature thus chosen has often shown scant regard for the public welfare in comparison with the private or political fortunes of the bosses who have sent their tools to the legislature. The referendum has proved an effective device for killing bad laws; moreover, the knowledge that it can be invoked acts as a preventive to the enactment of such laws. The "strike" and the franchise-steal have been practically eliminated. The corrupting lobby tends to disappear, for its employers lose confidence in the returns upon their investment, when any shady piece of legislation may be forced into the glare of state-wide publicity and made to undergo the ordeal of a popular vote.

But in recent years American states have often suffered less from the inadequacy or badness of the bills that have been passed than from the legislature's indifference to public needs and its persistent refusal to deal with them. To meet this situation the initiative affords the logical remedy. It is significant that the measures which have made Oregon a pioneer in the renovation of state government—the direct primaries act (including Oregon's revolutionary device for securing popular control over the election of United States Senators, *see* SENATE), the corrupt practices act (*see*), the workmen's compensation act (*see* EMPLOYER'S LIABILITY)—have all been enacted by the people, voting upon initiative proposals, after their representatives in the legislature had defeated or refused to act upon such measures.

An important incidental gain from direct legislation is its educative effect upon the electorate. It is beyond dispute that in Oregon the interest of the voters has been keenly enlisted, and the discussions and the voting upon such widely varied state issues have caused a diffusion of intelligence upon economic and political problems which is highly exceptional. It follows that laws, enacted by popular vote after thorough and spirited discussion, carry with them a greater impressiveness and command more loyal observance than laws which may owe their enactment to the chance coalition of partisan groups in an unrepresentative legislature.

Grounds for Distrust.—But both theory and experience furnish arguments to those who look upon direct legislation with distrust. Its critics insist that in law-making it substitutes the average for the exceptional intelligence, that it proceeds upon the assumption that because members of the legislature have done unsatisfactory work, they with the masses of voters—who chose these very men as their representatives—will show a high grade of legislative wisdom and public spirit in the ballot-booth. But the defenders of direct legislation reply that experience has shown the average legislature to be made up not of skilled and distinguished legislators but of very ordinary citizens, who too often have been seduced by party interests or the temptations of power.

A natural prediction that the mass of the voters would enact class legislation, particularly in the way of confiscatory taxation, has not been confirmed by experience. Nor has the fear that direct legislation would put ultra-radicals in control been realized. For, while it is not difficult to obtain the requisite number of signatures to initiate revolutionary proposals, the securing a majority in the popular vote is a very different matter. In fact, in America as in Switzerland, the working of direct legislation has proved to be surprisingly conservative, and in both countries it has lost favor with some groups of radicals who have discovered that in the give-and-take of party groups in a legislature they stand a better chance than when, after months of the openest publicity, single proposals are submitted to popular vote. It is not to be denied, however, that in handling direct legislation measures the voters often show the same parsimony which frequently characterizes town-meeting government in matters relating to salaries of elective officers and of those who render professional services. As a result the public often fails to secure the most efficient and hence most economical service.

Both theory and experience show that when the enacting of laws is shifted from legislative halls to the ballot-booth, there is a serious loss of certain excellencies which centuries of parliamentary practice have imparted to representative government, at its best. The mere adoption of the initiative and referendum does not in itself make effective any substitute for the direct clash of argument which characterizes parliamentary debate, for the expert drafting which a measure is likely to receive at the hands of experienced legislators, nor for the searching investigation possible at the hands of a small legislative committee with specialized knowledge in that particular department of legislation. The most intelligent advocates of direct legislation acknowledge that the success of their system will be contingent upon its evolving equivalents for these salutary features of the older legislative procedure. But in fairness it must be conceded that the direct legislation movement has owed its vigor to the fact that in the ordinary legislature of recent years these very safeguards have not proved adequate to prevent the passage of many laws which were not in the public interest. Initiative measures are sometimes crude; Oregon voters solemnly gave their approval to a bill which proved null and void because it contained no enacting clause. But crudity is not lacking in the output of every session of Congress or state legislature. It is creditable to the voters' intelligence and integrity that in passing verdict upon legislative proposals they rarely fail to detect chicanery. It is the boast in Oregon that no measure

which contained a "joker" has ever escaped defeat at the hands of the voters. At any rate, their record in that respect is in creditable contrast with that of Congress and many a state legislature.

Variations in Laws.—Serious difficulty may arise from the fact that a law enacted by the people may prove at variance with the great body of the state's law and practice. An Oregon constitutional amendment gave to the cities of the state the widest measure of home-rule "to enact and amend their municipal charter, subject to the constitution and criminal laws of the State of Oregon." It has proved a difficult task to secure any definite and authoritative interpretation as to what range of power is really to be allowed to cities. A question which may arouse some apprehension is, who are the real sponsors of direct legislation measures? Signatures are easily secured for almost any petition, and there is danger that the mass of names may make a deeper impression upon the heedless that the merit of the measure deserves. In August, 1911, five hired petition-circulators were under arrest in Oregon charged with complicity in the forging of 8000 signatures on a single referendum petition. Not only may demagogy dictate initiative and referendum measures, but it has been found that the referendum may be invoked for partisan reasons or even for personal spite, with an intent to delay or complicate the settlement of an issue.

Facilities for Information.—If law-making is to be transferred from the capitol to the ballot-booth, it follows that a mere educational qualification for the suffrage (*see*) is not adequate, but that the state must provide facilities by which every conscientious voter may inform himself as to the issues he is to decide. Whatever measure of success has been attained by direct legislation in Oregon has been largely due to intelligent provision which that state has made to equip the voter for his new tasks. The law requires that every measure which is to be submitted to the people on demand of duly signed initiative or referendum petitions must be filed not less than four months before the general election. The duty is devolved upon the attorney general to formulate a candid and comprehensive ballot title for each measure. The secretary of state then compiles the campaign book. This contains each measure's ballot title and number, with spaces for the cross against *Yes* and *No*, precisely as these will confront the voter in the ballot-booth. Next there is printed the proposed law, without change or abbreviation, in order that the voter may familiarize himself with the precise proposition upon which he is to record his verdict. Next, under each measure the book contains such arguments for or against it as interested parties may choose to prepare for that purpose; they pay only the exact cost of the paper and printing required for these arguments. Eight weeks before the general election, the secretary of state must mail a copy of this campaign book to every registered voter in the state. The cost of press-work, binding and postage is borne by the state as a legislative expense as logical and legitimate as the charges for members' salaries or committee hearings in the ordinary legislative session. In the state-wide distribution of this campaign book is found the explanation both of the exceptionally large vote cast in Oregon upon direct legislation measures as compared with similar votes in other states, and also of the discrimination shown by the voters in adopting or rejecting measures. The campaign book furnishes the authentic text for earnest discussion between individuals and before all sorts of organizations throughout the state. It is said that, in 1910, the total cost to the state for printing, binding, and mailing the 208 page book setting forth the 32 measures with accompanying arguments, to every registered voter in the state was less than 20 cents apiece, and that the total of such costs to the state for the initiative and referendum in the four elections since their introduction, 1904—1910, on 64 measures was less than $50,000.

In Local Government.—In the United States the initiative and referendum have been most strongly advocated in the field of state law-making. But in increasing measure they are being invoked in local government. One of the most fruitful sources of evil in American city government has been the absolute control which the state legislature held over the cities which were its creatures (*see* CITY AND THE STATE). In recent years, however, not only has law generally required that charters and their amendments be subject to ratification by popular vote in the city concerned, but in some states the abuses of special legislation have been still further checked by giving cities at least a suspensive veto upon legislative acts applying to individual municipalities. An Oregon law, secured in 1906 by popular vote provides, that the people of every city shall have power to make and amend their city charters on all local matters, free from special interference from the legislature. This power has been freely exercised. At the municipal election, June 5, 1911, the voters of Portland passed upon 23 projects of direct legislation, 17 of which were proposed amendments to the city charter; 13 had been referred to the voters by the city council. Eight measures had been proposed by initiative petition; and two were ordinances which had been passed as emergency measures by the city council and had been in effect for nearly a year, but were now brought before the voters by referendum petition—and both of them were rejected. The votes upon the 23 measures showed that Portland citizens took a serious interest in these matters of their own government—the lowest

vote on one of these measures was 76 per cent of the aggregate of votes cast for filling the most hotly contested office in that election—and that they were disposed to be conservative and frugal in guarding the permanent interests of the city.

In the Federal Government.—Few advocates of direct legislation believe that the initiative and referendum are directly applicable to national law-making. Aside from the objections ordinarily urged against direct as compared with representative legislation, there arise two of great weight. In the first place, a national initiative or referendum would not accord with our federal system of government. In the second place, the peace of the community and the stability of industry would be exposed to appalling hazards, if national legislative issues were to be determined by majorities which might have been turned into minorities by a dozen votes in an electorate of 20,000,000 scattered over the immense domain of the United States. But the spirit back of the direct legislation movement has already affected Congress and is likely to have still greater influence in the future. By the initiative the people of Oregon secure effective popular control of senatorial elections, and within seven years this novel lead has been followed in ten other states. The direct primary is everywhere recognized as a child of the same parentage as the initiative. Through changed laws as to nominations and elections, the responsibility of members of each house of Congress is being more effectively enforced, for through the direct primary a congressional election, like a general election in England, takes on the character of a referendum upon the work Congress had done or left undone.

Unsettled Questions.—Experience has raised some unsettled questions in regard to direct legislation. The law usually provides that by declaring a certain measure to be required by the public health, peace or safety, the legislature may pass it to go into effect at once, upon signature by the governor. Although it may later be annulled on referendum petition, it is obvious that meantime irreparable action might have been taken. A second question relates to the effect which the introduction of direct legislation is to have upon the personnel and spirit of the representative legislature. The most intelligent advocacy of direct legislation insists that its principal object is remedial and preventive, and that by it the legislature should be made more genuinely representative, with the result that appeal to the initiative and referendum would become less frequently necessary. In Oregon it is the general testimony that since the initiative and referendum have come into use, the legislature has become "money-honest" and freed from the lobby; but its members have shown themselves sullen or restive under the restraints of direct legislation, and have not risen to more responsible leadership of public opinion. A further question is whether, in Oregon at least, it is not made too easy for a small minority to keep forcing their pet measure upon the ballot, with little proof that it is of genuine public interest. Thus in Oregon, in the face of steadily increasing majorities, four times in ten years the question of woman's suffrage has been placed upon the ballot. As a defense against such ineffective importunity, some states require that a rejected initiative measure shall lie in abeyance for at least three years. The abuses which have already developed in the heedless if not fraudulent signatures secured by hired petition-circulators have led to the suggestion that these petitions should be filed with the county clerk and signed only by persons who felt enough interest in the given proposal to present themselves at that office in person. Moreover, it is greatly to be desired that the number of measures upon which the electors are called to vote at any one election he kept within reasonable limits. It is absurd that at one time the voter should have to pass judgment on a score or more of different projects.

There is merit in a variation from the ordinary form of the initiative, now being advocated in some states—that the initiative be applicable only to measues which have been introduced in the legislature. Where, as in Massachusetts, the committees report to the legislature upon all bills submitted to them, this would conserve valuable opportunities for legislative investigation and debate, while giving the people power either to repeal laws passed by the legislature, or to take up and enact any measure to which the legislature had refused its assent.

See INITIATIVE; LEGISLATURE AND LEGISLATIVE REFORM; LOCAL OPTION; PRIMARY, DIRECT; RECALL; REFERENDUM; REPRESENTATIVE GOVERNMENT.

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GEORGE H. HAYNES.

LEGISLATION, DRAFTING OF. See DRAFTING OF LEGISLATION.

LEGISLATION, FILIBUSTERING IN. See FILIBUSTERING IN LEGISLATION.

LEGISLATION, PRESCRIBED METHODS AND FORM OF. See BILLS, COURSE OF; BILLS, TITLE OF; CONSTITUTIONS, STATE, LIMITATIONS IN.

LEGISLATION, WHEN IT TAKES EFFECT. By an old rule of the common law, statutes, unless it was otherwise provided, took effect from the first day of the session at which they were passed and were thus retrospective in operation. By a statute of 33 George III, however, it was provided that thereafter acts of Parliament should take effect from the date upon which they received the royal assent, unless it was otherwise ordered.

The laws of the United States take effect from the date of their approval by the executive. The Secretary of State is required to publish the laws in certain newspapers "as soon as convenient" but they take effect, as stated, from the moment of their approval by the President.

The constitutions of many of the states expressly provide when statutes shall go into effect. In some it is provided that they shall take effect from the date of publication; in some on the fortieth day after their passage; in some on a certain day after the end of the session; in some on a certain day of the month, as July 1, or July 4, or June 1 after their enactment. In other states the legislature is left free to prescribe the date when they shall take effect. In a few states the constitution provides that no act shall take effect until it has been published. Some, in fixing the date of taking effect, provide that in cases of emergency an act may be made to take effect at an earlier day provided the legislature shall by an extraordinary majority declare that the act is of an urgent character.

See ACTS OF CONGRESS; STATUTES, STATE.

J. W. G.

LEGISLATIVE ASSEMBLY. The legislative assembly of a state is sometimes called the general assembly, or the state legislature. It is composed of two houses, the upper usually elected for a longer term than the lower. Their powers are defined in the state constitutions, and are limited also by the Federal Constitution (Art. I, Sec. x). In many states the enacting clause has been changed from "Be it enacted by the General Assembly," to "Be it enacted by the people of the state." See STATE LEGISLATURE. References: See constitutions of the different states; A. B. Hart, *Actual Government* (1908), ch. vii.

T. N. H.

LEGISLATIVE OUTPUT, STATE AND NATIONAL. A characteristic feature of American legislation is the astounding quantity of enactments passed by the national and state legislatures, in comparison with those of Europe. During the second session of the 58th Congress, 3,992 acts were passed by that body. Of these, 1,832 were public bills, 2,160 were private bills, and 40 were joint resolutions. During the session which ended in May 1910 more than 36,000 bills and resolutions were introduced, of which more than 7,000 were passed. Of those passed, only about 500 were of a general public character. In the state legislatures, from October 1, 1904 to October 1, 1905, 13,530 acts and joint resolutions were passed; from October 1, 1906 to October 1, 1907, the number was 16,064 and from October 1, 1907, to October 1, 1908, it was 6,025. In one year the output of state legislation filled more than 25,000 pages of printed matter. During the five years from 1899 to 1904 the total number of acts passed by the several state legislatures aggregated 45,552 of which 16,320 were public acts, the remainder being private and local enactments. Between 4,000 and 5,000 bills and resolutions have been introduced into the New York Legislature at a single session. A large portion of the acts enacted by the states are special or local acts. At two recent sessions of the Alabama legislature, 1,132 acts were passed of which all except 90 belonged to this class of bills. Compared with the legislative output of the British Parliament this enormous volume of legislation appears all the more striking. Bryce stated before the New York State Bar Association in 1908 that during the years 1906 and 1907 Parliament, which is the legislature for 43,000,000 people, enacted but 114 public general acts and that in 1908 it passed but 241 acts. The 114 statutes of 1906 filled a volume of 700 pages as compared with 5,000 pages of statutes enacted by the Congress of the United States. The total number of bills introduced into Parliament during the last year mentioned was only 482.

The excessive amount of legislation enacted in the United States is due partly to the American fondness for legislation, partly to the pressure from localities and special interests, and partly to the American practice of regulating by statute many matters which in England are dealt with by statutory orders and on the continent by ordinances (*see*). The bulkiness of

American legislation is also due to the practice of descending into excessive detail in the preparation of statutes so as to leave the minimum of discretion to the executive officers charged with their enforcement. Much of this legislation, unfortunately, is crude, inferior in quality, ill considered and carelessly framed. In several states more than two-thirds of the bills enacted have been passed during the last week of the session. As a consequence, many of them are declared unconstitutional on account of defective framing. From October 1, 1907, to October 1, 1908, 51 acts of the state legislatures were declared null and void and in the following year 97 acts met a similar fate.

See ACTS OF CONGRESS; CONGRESS OF UNITED STATES; CONGRESSIONAL GOVERNMENT; COST OF GOVERNMENT IN UNITED STATES.

References: "Index of Legislation" in New York State Library, *Bulletin* (annual); J. Bryce, *The American Commonwealth* (4th ed., 1910), I, 551–553; E. Freund, "Jurisprudence and Legislation" in Congress of Arts and Sciences, *Proceedings*, 1904, VII; P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1903), ch. x; H. J. Ford, *Cost of Our National Gov.* (1910), 38 *et seq.*; C. A. Beard, *Readings in Am. Government and Politics* (1911), 475–478; C. L. Jones, *Statute Law Making* (1912), ch. ii. JAMES W. GARNER.

LEGISLATIVE POWER, THEORY OF. Generally speaking, the legislative power is the power to make, alter and repeal laws. It is the power through which the state creates and defines rights and duties, prescribes rules of conduct and regulates the relations among individuals and between them and the state. In its widest sense, it consists in the formulation and expression of the will of the state, either through a constituent assembly, a legislative assembly or a local body to which the power of legislation has been delegated. In this sense, the framing of a constitution, equally with the enactment of a statute or the passing of a by-law by a public corporation is the exercise of legislative power.

In a more restricted sense, the legislative power may be defined as the power exercised by a legislative body, it being understood, of course, that not all such power is intrinsically legislative in character. Thus when the legislature participates in the appointing power it is exercising an executive rather than a legislative function. Similarly when it hears and tries impeachment charges, determines contested election cases and punishes its members or other persons for contempt it is exercising functions which are really judicial in character. On the other hand it is rarely the case that all the legislative power of the state is vested in the legislature. The courts are frequently vested with the power of framing their own rules of procedure and through their power of interpretation and construction, they develop or create large bodies of "judge made law" (*see* JUDICIAL POWER). In Europe, especially, extensive powers of a quasi-legislative character are exercised by executive and administrative officers through their power to issue ordinances (*réglements, verordungen*), regulations and decrees. On the continent of Europe, particularly in France and Germany and to a less extent in England, this power is very considerable. There statutes are not framed with the excessive detail which characterizes American legislation, the executive being left by means of ordinances to supplement the statute and fill up the details. Even in the United States where the idea of the *pouvoir réglementaire* has never made the same headway as in Europe, the executive in fact exercises a considerable legislative power through proclamations and regulations in pursuance of his duty to execute the laws. The regulations issued by the Secretary of the Treasury, the Secretary of War, and the Postmaster General, in particular, constitute in the aggregate an important body of executive made law. They often lay down general rules which are binding not only upon administrative officers but upon large bodies of private citizens who are affected by them. Not infrequently the power of independent legislation is specifically conferred upon the executive by Congress, notably in the government of territorial dependencies and districts occupied by the armed forces of the United States (*see* ORDINANCES, EXECUTIVE).

Delegation of Legislative Power.—The rule of American constitutional law that the legislative power cannot be delegated by the legislative department to any other authority or body must therefore be understood as having exceptions. It is not necessary that a legislative act should be a completed statute when it leaves the hands of the legislature. Its taking effect may be conditioned upon some subsequent event, especially when that event is one which affects the question of the expediency of the law. For example, the operation of a tariff law may be conditioned upon the reciprocal action of a foreign country in respect to its tariff policy (Field *vs.* Clark, 143 *U. S.* 649). But the weight of authority among the courts is that the approval of a statute by the people through a referendum is not an event which affects the expediency of the law and hence its validity cannot, in the absence of constitutional authority, be made to depend upon popular approval (*see* VOTE, POPULAR, ON LEGISLATIVE QUESTIONS). Except where the constitution expressly authorizes a referendum, therefore, the legislature may not delegate its powers of legislation to the people. But this principle does not prohibit the legislature from conferring the power of local legislation upon municipal or other local governmental bodies or powers of quasi-legislation upon the executive or judicial authorities, and, in fact, many

constitutions require that certain acts of the legislature shall be submitted to the voters and approved by them before they may take effect. It has also been held that legislatures can give to a commission the power to fix rates or charges on certain businesses that are legally subject to such control, but a determination of rates is subject to judicial review as to reasonableness (*see* PRICES AND CHARGES; SEPARATION OF POWERS; LEGISLATION, DIRECT; REFERENDUM).

Where, as is the practice in the United States, the principle of the separation of powers is rather strictly followed, the legislative power can be exercised only by the legislative department unless the constitution recognizes exceptions (*see* JUDICIAL POWER; SEPARATION OF POWERS). Likewise the legislative power does not extend, in the absence of constitutional provisions to the contrary, to acts which are intrinsically executive in character. It is the function of the legislature to prescribe rules of action and lay down commands, it is the function of the executive to enforce them. Thus the legislature cannot grant pardons or make appointments or direct the command of armed forces unless the constitution plainly vests it with such authority.

Limitations on the Legislative Power.—The legislative power unlike the executive power, is usually granted in general terms, that is, without any attempt to set forth the objects to which it shall apply. The contrary rule, however, prevails with regard to the legislative power of the United States, the Constitution of which sets forth by enumeration the subjects upon which Congress is authorized to legislate. There is a tendency in recent years, however, to impose constitutional limitations upon the exercise of the legislative power particularly in regard to financial legislation and legislation of a local or private character. Some of the newer state constitutions contain many such limitations and the disposition is to multiply them (*see* CONSTITUTIONS, STATE, LIMITATIONS IN).

See CONGRESS OF UNITED STATES; JUDICIARY AND CONGRESS; LAW, CONSTITUTIONAL, AMERICAN; SEPARATION OF POWERS.

References: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), chs., v–vi; A. V. Dicey, *Law of the Constitution* (3d ed., 1910), lect. II; F. J. Goodnow, *Comparative Administrative Law* (1897), Bk. 1, ch. iii; J. Story, *Commentaries on the Constitution* (5th ed., 1891); J. W. Garner, *Intro. to Polit. Sci.* (1910), ch. xiv; C. L. Jones, *Statute Law Making* (1912), ch. 2.

JAMES W. GARNER.

LEGISLATIVE REFERENCE BUREAU. The legislative reference movement was initiated by the appointment of a legislative librarian in the New York state library in 1890. This librarian indexed the laws of all the states so that their methods and experience might be available to the New York legislator. The idea, however, did not spread until 1901, when the Wisconsin legislative reference department, with Dr. Charles McCarthy in charge, was established by the Wisconsin Free Library Commission.

The experience of this and other legislative bureaus indicates the following functions as proper for such an agency: (1) the systematic collection and organization of information useful in the consideration of problems of legislation; (2) the personal service of specially trained men in helping the legislator to the facts bearing on his specific problem; (3) the drafting of bills at the request of members or committees of the legislature.

In New York, bill drafting had been carried on by a separate bureau under the immediate control of the legislature; the new department in Wisconsin combined bill drafting with the library and the trained personal service. This combination served the extremely useful purpose of bringing the department immediately into close personal relations with practically all the legislators who were anxious to have bills drafted, and this offered an excellent opportunity to bring to the legislator's attention the facts and facilities for obtaining scientific information which could be placed at his disposal through the bureau. In a few states the legislative reference bureaus are not connected with the state library. In most cases, however, a special bureau has been created within the state library, at the head of which is a man specially trained and qualified for this particular kind of work.

The work needs to be entirely non-partisan, to serve all alike without regard to the personal views of those in charge. Too much emphasis cannot be placed on the importance of appointing properly qualified men. Several attempts have failed for lack of this essential. A necessary qualification is the ability to meet and gain the confidence of the members of the legislature; hence the work must be based on a broad knowledge of economics, government and public law, supplemented by a complete organization of facts.

Among the leading legislative reference bureaus at the present time may be mentioned these of Wisconsin, New York, Pennsylvania and Indiana. Active work of this kind is also carried on in Massachusetts, Rhode Island, Connecticut, Maryland, Virginia, Ohio, Michigan, Iowa, Nebraska, Kansas, Texas, North Dakota, South Dakota and California. In a large portion of the above cases the work has been undertaken by the state library without special authorization; and in certain cases, notably Massachusetts, Rhode Island and Connecticut, has been carried on under the immediate direction of the state librarian.

See BILLS, COURSE OF; COMMITTEE SYSTEM IN UNITED STATES; DRAFTING OF LEGISLATION;

LEGISLATURE AND LEGISLATIVE REFORM; STATE LEGISLATURE; STATUTES, STATE.

References: Librarian of Congress, "Report Relative to Legislative Reference Bureaus" in *Senate Docs.*, 62 Cong., 1 Sess., No. 7 (1911); Library of Congress, Legislative Drafting and Legislative Reference Bureau, "Hearings before the Committee on the Library" in *ibid*, 62 Cong., 3 Sess. (1913), 145; Charles McCarthy, "Wisconsin Legislative Reference Department" in Am. Library Assoc., *Proceedings*, 1905, 244–45. ROBERT M. WHITTEN.

LEGISLATIVE SYSTEM IN EUROPE

Functions: Legislation and the Budget.—Representative assemblies perform three functions. They are, first, law-making bodies; second, tax-laying and money-appropriating organs; third, agencies of executive control. In Europe, where the principle of ministerial responsibility to the legislature has almost everywhere been adopted as a form of constitutional law, the relative importance of these three functions is quite different from its importance in the United States. The executive in parliamentary governments enjoys a far greater share in legislation than is permitted in states which rigidly apply the doctrine of the separation of powers. Upon the continent, as in England, law-making is primarily the work of the ministry, the activity of the legislature being generally confined to criticism, amendment and acceptance or rejection of the proposals submitted. Even within this rather narrow sphere its actual competence is limited. With respect to the raising and expenditure of revenue, which strictly is an administrative and not a legislative function, the representative bodies upon the continent are far more restricted than in the United States. The budget is always prepared and submitted by the ministry and modifications are possible only within comparatively narrow bounds. In Germany, moreover, it has come to be an accepted principle of public law that a representative assembly must not under any circumstances reject *in toto* the financial proposals of the government. The weight of juristic opinion would justify the executive, were the legislature to refuse to pass the budget, in proceeding without legislative warrant in laying taxes and expending the revenue.

Functions: Control of the Executive.—It is in the field of executive control that European parliaments play their most important rôle. Nearly every European constitution contains an article making the ministry responsible to the legislature. The actual extent to which this constitutional prescription is realized varies. In Germany ministerial responsibility is far less developed than elsewhere in western Europe; but even in those states where the monarch retains a large amount of real power the institutions of parliamentary government have at least found lodgment, and the trend of political evolution is distinctly toward effective legislative control of the active agents of administration. Many of the continental constitutions contain provision for an impeachment process, but this penal sanction of ministerial responsibility has everywhere been superseded in practice by the more effective political guarantees. By means of commissions of inquiry (technically termed *enquêtes*), by interpellations accompanied as they are upon the continent by debates and votes, by the defeat of ministerial measures, and by direct votes of lack of confidence, representative bodies are able to bring ministers to account for their administrative and political conduct; and in most of the countries of western Europe ministerial tenure is dependent upon the confidence of the representative body. Indeed the gravest defect in continental governments is the excessive instability of ministries which succeed each other with bewildering and kaleidoscopic rapidity. This is due, in part, to the absence of the bi-party system, as it exists in Anglo-Saxon countries. The presence of numerous political groups and personal factions in the legislature compels the formation of coalition ministries which are always weak and liable to reversal at any moment by a new combination. There is no strong, responsible opposition ready to take up the work of government when the party in power is defeated, and therefore under a sobering sense of the necessity of avoiding merely factious opposition. The employment of interpellations accompanied by debates and votes, instead of the simple parliamentary question which does not give rise to an expression of the chamber's sentiment or opinion, is also a fruitful source of ministerial crises. The bicameral principle also operates in France as a serious provocative to ministerial instability. In most continental countries the ministry have the same weapon of defense against a censuring chamber, in the power of dissolution and appeal to the electorate, which English ministries possess. But in France and Germany this right of dissolution—what Bagehot calls the great "regulator of the constitution"—is made dependent upon the upper chamber. In Germany there is never any difficulty in securing the Bundesrath's consent to a dissolution of the Reichstag, but in France this right has not been exercised since 1877 and is practically obsolete.

Organization: Upper Chambers.—Representative institutions upon the continent bear the

marks of conscious imitation of the English constitution. The bicameral principle, the result of special and peculiar circumstances in England, has been adopted throughout Europe, except in Greece, Luxembourg and a few of the smaller German states where single chambers suffice. In the federal states of Germany and Switzerland a logical basis for the upper chamber is found in the principle of special representation for the member-states of the union, as distinguished from the principle of representation of the nation as a whole which is expressed in the lower house. The government of the German Empire is in many respects unique, reflecting far less the process of blind copying, and being far more the product of historical forces than any other upon the continent. The German Bundesrath is at once an executive council, a judicial tribunal and a legislative chamber, while it also possesses many of the characteristics of an international congress of diplomats. It is altogether the most important organ in the imperial government. Its position is therefore *sui generis* among upper chambers. With the exception of these federal states the upper chambers of continental Europe, including those of the several German states, display a decidedly artificial character. They have generally been manifestly created as a result of theoretical considerations or in imitation of the House of Lords. Their practical utility is sometimes difficult to discover. In some cases, as in France and Belgium, they are senates chosen by indirect election or by a restricted suffrage and designed to represent the propertied interests in the country. Elsewhere, as in Prussia, Austria, Hungary and Spain, they are at least partially aristocratic and hereditary. The representation of interests is noticeable in the composition of most European upper chambers. In Italy, for example, the senate consists of princes of the royal blood, and of members appointed for life by the king from certain categories of persons—eminent civil, military and judicial officials; members of the lower chamber who have served three terms; persons who have been for seven years members of the Royal Academy of Science; persons who pay a very large amount of taxes; and those who have won distinction by service to the state. In a number of states provision is made for the representation of the Roman Catholic, the Greek or the evangelical churches. It is usual among the German states to give the municipalities and the universities representatives in the upper chambers.

The general theoretical advantages of a revising chamber in any legislative system are still sufficiently potent to preserve the bicameral principle. But the uniform experience of Europe certainly indicates that upper chambers tend either to sink into positions of insignificance or to become effective clogs upon the action of the more popular body. With respect to law-making the bicameral principle may be justified; in connection with raising and appropriating money for the services of government upper chambers have everywhere been greatly limited in power; with respect to executive control they are a distinct nuisance. It is obvious that a ministry cannot be responsible to two chambers at the same time and preserve the least degree of stability or independence. They are everywhere either a nullity or a menace.

Organization: Lower Chambers.—The lower houses in Europe are everywhere presumed to represent the people and reflect their will. The tendency is to broaden and liberalize the basis of representation. There still exist, however, a number of anomalous and indefensible electoral systems which pervert and miscarry the theory of representative government. Of these the worst is doubtless the three-class system in Prussia—until lately also in force in Saxony. Under this system there exists nominal universal suffrage, but this is nullified in practice by the disproportionate weight which is given the wealthy classes of the community. The election to the House of Representatives of the Prussian legislature is indirect, accomplished by means of colleges of electors in the constituencies which are all single-member districts. The voters are grouped in three classes according to the amount of direct taxes which they pay. The very richest men who pay one-third of the taxes in the district constitute the first class; the well-to-do who pay a second third of the taxes constitute the second class; and the bulk of the electorate paying the remaining third of the taxes constitute the third class. Each class votes separately and chooses one-third of the electors (*Wahlmänner*) for the district. The first and second classes habitually operate together and so control two-thirds of the electoral college which chooses the representative. The effect is to practically disfranchise the mass of the people. In the election of 1908, the Conservative party casting 350,000 votes was able to return, under this system, 152 members to the House of Representatives; while the Social Democrats casting 600,000 votes secured only 7 seats. In Belgium and in Saxony a system of plural voting obtains which gives heads of families, persons possessed of property in certain amounts, holders of academic degrees, those who hold or have held public office, professional men, and the like an additional vote or votes. While not so objectionable as the Prussian three-class system, plural voting is repugnant to modern ideas of equal and universal suffrage.

In most of the countries of Europe, including France, the German Empire, Austria, Italy and Spain, the principles of equal suffrage and direct election obtain. In many European countries an actual majority of all votes cast is necessary to elect. This involves the necessity of a second ballot in districts where the

first ballot does not produce this result. In France a plurality suffices on the second ballot, while in Germany a majority is insured by eliminating all but the two candidates who stand highest in the first ballot. This practice is generally condemned by publicists as tending to split up parties and facilitate the entrance of new groups—already the bane of continental politics. The comparative advantages and disadvantages of election by single member districts (*scrutin uninominal*) and election by general ticket (*scrutin de liste*) have been much discussed upon the continent, and there have been frequent changes in this respect in France and Italy. The widespread demand for some form of minority, or proportional, representation at present would seem to portend a return to *scrutin de liste* in several countries which have abandoned it, notably in France.

Continental legislative bodies are generally divided by lot into sections, called *bureaux* in France, *uffici* in Italy, and *Abtheilungen* in Germany. The committees, which are a much more important feature of legislative procedure than in England, are selected by the sections, each section choosing one, two or three members for each committee. This system does not work well as too much is left by it to chance. Members of the majority party who are authorities in a particular field may be excluded from the committee charged with that subject because they happen to be in a section in which the minority predominates, or because there may happen to be in one section a too plentiful supply of experts while other sections lack men specially interested in the subject with which the committee has to deal.

See CABINET GOVERNMENT; GERMANY, FEDERAL ORGANIZATION OF; MINISTERS AND MINISTERIAL RESPONSIBILITY; PARTY SYSTEM IN EUROPE; SUFFRAGE IN EUROPEAN COUNTRIES.

References: F. A. Ogg, *The Govts. of Europe* (1913); A. L. Lowell, *Governments and Parties in Continental Europe* (1896); W. Wilson, *The State* (2d ed., 1898), chs. iv-ix; J. W. Burgess, *Pol. Sci. and Comparative Constitutional Law* (1891), II, 77–132, 168–184; W. F. Dodd, *Modern Constitutions* (1909); *Statesman's Year Book* (annual); R. Dickinson, *Summary of the Constitution and Procedure of Foreign Parliaments* (2d ed., 1890); J. W. Garner, *Intro. to Pol. Sci.* (1910), ch. xiv; Esmein, *Eléments de Droit Constitutionnel* (4th ed., 1906), Pt. II ch. v; J. E. Bodley, *France* (3d ed., 1902), II. Bk. III; B. E. Howard, *The German Empire* (1906), chs. iv–vi; J. H. Robinson, "The German Bundesrath" in University of Pennsylvania, *Pol. Economy and Public Law Series*, III, No. 1 (1891).

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LEGISLATURE AND LEGISLATIVE REFORM

Powers.—The powers of an American state legislature, unlike those of Congress, are not specifically enumerated in the Constitution but are residuary in character, the result being that a state legislature may legislate concerning any subject upon which it has not been forbidden to legislate by the Constitution of the United States or the constitution of the state. The extent of the legislative power of the states is therefore extensive and varied. Among the subjects to which it extends may be mentioned the definition and punishment of crimes; civil rights; judicial organization and procedure; the ownership, use and disposition of property; contracts, trade, business, industry and the professions generally; local government; the public health, police, education, charity, marriage, divorce and the domestic relations generally; elections; and the regulation of corporations in so far as their business is not interstate in character. To attempt to enumerate the subjects falling within the scope of the legislative power of the states would involve cataloguing all the business and social relationships as well as the civil rights and duties of citizens. Formerly the state legislatures also possessed a large power of appointment. In the early days they chose most of the principal state officers, but gradually that power was withdrawn and devolved for the most part upon the people.

Limitations.—In recent years there has been a marked tendency to place important restrictions upon the legislative power by means of constitutional limitations. These limitations are particularly numerous in the newer constitutions of the South and West. First of all, many constitutions forbid the enactment of local or special laws on many matters where general laws are applicable, or they permit special legislation subject only to certain conditions, such as approval in some form by the particular locality affected. In some states there are also restrictions upon private legislation (*see* PRIVATE BILLS). Many constitutions also impose restrictions upon the financial power of the legislature. Thus their power to incur debts is usually limited to certain amounts, and restrictions upon their power to levy taxes and appropriate money are also quite common. In many states there are also constitutional limitations upon the length of the session (*see* SESSION OF LEGISLATIVE BODIES). There is also an increasing tendency to regulate by constitutional provisions their methods of procedure with a view to compelling careful consideration of the measures which are passed by

them (*see* AMENDMENT OF LEGISLATIVE MEASURES; DEBATES IN LEGISLATURES; ORDER OF BUSINESS IN LEGISLATIVE BODIES). The various provisions in the bills of rights, of course, serve to limit the power of the legislature in many particulars. Finally, their power of legislation has suffered an abridgement through the growing practice of regulating by constitutional provision many matters, formerly regulated by statute. This is notably true of such subjects as corporations, local government, taxation and revenue, education and other matters (*see* STATE LEGISLATURE).

Legislative Reform.—During recent years the state legislatures have suffered a considerable loss of public esteem, evidence of which is found in the numerous constitutional provisions limiting their powers and prescribing rules of procedure to safeguard the public against ill considered, excessive and mischievous legislation. It has become a common complaint that the type of men now generally elected to the state legislature is lower than formerly and that our legislative assemblies do not faithfully represent the people. How to improve the character of these bodies, increase their efficiency and honesty and improve the quality of the legislative product are questions that have occupied the attention of many good citizens and reform organizations. In some states legislative voters leagues and other civic organizations have rendered an important service in helping to bring about the election of honest and capable legislators and preventing the enactment of objectionable legislation. Their method is to investigate the character and records of candidates, make recommendations to the voters for their enlightenment and sometimes keep watch over proposed legislation.

In Illinois the legislative voters league has for some years directed its efforts toward the election of honest and capable members from the Cook county districts, and recently it has extended its operations to the rest of the state by means of advisory councils in each legislative district. It also maintains a bureau at the state capital for the purpose of keeping the public informed concerning the merits and demerits of pending legislation. The City Club of New York City maintains a somewhat similar agency at Albany for the purpose of studying bills introduced into the legislature and for keeping the club informed of objectionable measures to the end that it may have an opportunity to oppose such legislation. In several instances the enactment of objectionable legislation has, in this way, been prevented. In a number of other states, similar organizations have rendered conspicuous service of this character.

Reference Bureau and Bill Drafting Agencies.—To provide the legislature with detailed and technical information concerning the practical working of such legislation in other states, legislative reference bureaus (*see*) have been established in a number of states. The first one was established in New York in 1890; and its published indexes and reviews of state legislation have been of immense service in other states. In 1901 a legislative reference department was established in Wisconsin, which has attracted wide and deserved attention throughout the country, and has been the model for many other states. During the past ten years such departments have also been established in Indiana, Michigan, Iowa, Nebraska, North and South Dakota, Montana, Washington, Oregon, California, Alabama, North Carolina, Virginia, Pennsylvania and Rhode Island.

Another service frequently performed by such bureaus is that of rendering assistance to members of the legislature in the preparation and drafting of bills, one of the most difficult tasks of modern legislation (*see* DRAFTING OF LEGISLATION). The difficulties of effective drafting in state legislation in this country are shown by the increasing amount of litigation which turns on questions of statutory construction, and which arises from ambiguity or uncertainty in the language of statutes. A special difficulty of this kind arises from the necessity of conforming the statutes to the provisions of the state and federal constitutions and for complying with the many technical requirements relating to such matters as titles of acts, the amendment of existing statutes, procedure in the legislature, etc. The value of such assistance is recognized in many countries and in a number of American states. In England there is a skilled parliamentary draftsman who prepares all important bills. In Connecticut, New York and South Carolina, there are bill drafting commissions and in Connecticut there is a clerk of bills whose duty is to assist members of the general assembly in drafting bills, acts and resolutions of a public nature. In New Jersey and Wisconsin there are supervisors or revisors of bills who perform somewhat similar services.

Other Reforms.—Illegitimate lobbying, particularly by the "special interests" has grown to be a serious evil in some states and has been responsible for much objectionable legislation (for a summary of the legislation designed to remove or diminish this evil *see* LOBBY). The evil of black-mail through the introduction of "strike" (*see*) bills by unscrupulous members has been a subject of complaint in some states. So has the practice of "ripper" (*see*) legislation, the purpose of which is to establish and maintain as far as possible the power of the party in control of the legislature over some large city in the state, the effect of such legislation being to disorganize or upset existing municipal arrangements. "Log rolling" (*see*) is likewise a practice which has led to the enactment of no little amount of legislation for which there has been no need nor popular de-

mand. An attempt to diminish this as well as kindred abuses has been made in many states by requiring that no bill shall relate to more than one subject which shall be clearly expressed in the title and that the governor shall have the power to veto specific items in appropriation bills. The legislature of Wisconsin recently enacted a drastic statute providing for the punishment by fine or imprisonment of any member who agrees to support the bill of another member on condition of receiving like aid for his own measure. Bribery and other forms of corruption in the American legislatures are, of course, among the most common sources of evil, especially in connection with private and local legislation (*see* BRIBERY; CORRUPTION, LEGISLATIVE). To diminish this abuse stringent anti-bribery laws have been enacted in many states and, as has been said, constitutional provisions have been adopted placing restrictions upon private and local legislation (*see* PRIVATE BILLS).

Through the extension of the initiative and referendum, the right of the people to legislate for themselves and to veto objectionable acts of the legislature has been secured in a number of states and, in the judgment of some reformers, the effect has been to elevate the character of the legislature and improve the quality of legislation (*see* INITIATIVE; REFERENDUM).

Insufficient consideration of bills by committees, the "smothering" of bills in committees and the practice of holding secret committee meetings have all been the subjects of criticism and attempts have been made in some states to remove the causes of complaint, by the adoption of constitutional provisions requiring all bills to be referred to committees and reported on, that all committee meetings shall be public, and the like. To compel the legislatures to confine their attention to the consideration of important measures for which there is a real popular demand, the policy of limiting the sessions of the legislature has been tried in a number of states, though the wisdom of such restrictions is doubtful and they have been abandoned by several states after a fair trial. To prevent the congestion of legislation in the last days of the session, and to induce the passage of bills earlier in the session, some constitutions forbid the introduction of bills after a certain date, provisions which are easily evaded and the wisdom of which may also be doubted. To further insure careful consideration of measures, many constitutions require three readings of bills, the printing of bills and many similar requirements.

The duty of choosing United States Senators has proved to be a distracting and demoralizing element which sometimes seriously interferes with legislation and affects injuriously the character of the legislative product. The withdrawal of this duty from the legislature through the substitution of popular election of Senators is expected to remove a source of corruption, improve the tone of legislative politics, leave the legislature more time to discharge its natural functions and elevate the character of the legislative output (*see* SENATE OF UNITED STATES; SENATORS).

Some reformers advocate the introduction of the system of minority and proportional representation (*see*) in some form as a means of making the legislature more truly representative but experience with the system of minority representation in Illinois, the only state in which members of the legislature are chosen according to such a system, has not been such as to commend it to the people of other states.

Reasons for Inferiority.—James Bryce gives the following reasons for the inferior character of our state legislatures: (1) the selection of members of the legislature by party conventions; (2) the habit of choosing none but residents of the district; (3) the fact that the capital of the state is frequently a small town and hence does not attract the best talent; and (4) that the nature of most legislative business does not excite public interest and involves no political issues. The poor quality of much state legislation is attributed by him to the following facts: inferiority, as respects knowledge, skill and sometimes also conscience, of the bulk of the men who fill these bodies; improvidence in matters of finance; heedlessness in passing administrative bills; want of proper methods for dealing with local and special bills; and the failure of public opinion adequately to control legislation and particularly local and special bills.

See ADJOURNMENT; AMENDMENT OF LEGISLATIVE MEASURES; CALENDAR OF LEGISLATIVE BODIES; COMMITTEE SYSTEM; CONGRESS; DRAFTING OF LEGISLATION; EXPULSION OF MEMBERS OF LEGISLATIVE BODIES; FILIBUSTERING IN LEGISLATION; LEGISLATIVE OUTPUT; MINORITY REPRESENTATION; REPORTS OF COMMITTEES; RULES OF CONGRESS; SESSIONS OF LEGISLATIVE BODIES.

References: C. A. Beard, *Am. Government and Politics* (1910), ch. xxv; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, ch. xl; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), chs. v–vi; P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1907), chs. iv–x; H. J. Ford, *Cost of Our National Gov.* (1910), ch. viii; E. Bruncken, "Defective Methods of Legislation" in Am. Pol. Sci. Assoc., *Review*, III (1909), 167–179; F. N. Judson, "Failure of Representative Government" in *ibid*, II (1908), 185–203; P. S. Reinsch, *Readings on State Gov.* (1911), 41–139; C. L. Jones, *Statute Law Making* (1912).

JAMES W. GARNER.

LEGISLATURES. A term strictly applied to all public bodies which have power to make laws; as a general term, applicable therefore, to Congress; but in the United States applied commonly only to the state and territorial

bodies, most of which are designated as the legislature in the state constitution. Though the English Parliament is officially made of King, Lords and Commons, no governor is a part of a state legislature; whether his veto power makes his a part of the legislative authority is a disputed question. See CONGRESS; LEGISLATURE AND LEGISLATIVE REFORM; STATE LEGISLATURE. References: C. A. Beard, *Am. Gov. and Politics* (1910), ch. xxv; P. S. Reinsch, *Am. Legislature and Legislative Methods* (1906); A. B. Hart, *Actual Government* (1908), ch. vii; E. C. Mason, *Veto Power* (1890). A. B. H.

LEGISLATURES AND PARTY MANAGEMENT. See PARTY ORGANIZATION IN LEGISLATIVE BODIES.

LETTER OF ACCEPTANCE. Nominees for the presidency and vice-presidency are expected, shortly after their designation as candidates, to write public letters in which they make a statement as to their principles and intentions. Such letters may avoid reference to the platform or may enlarge it or emphasize it. Usually the letters are rather restrained in tone, but in 1908, William H. Taft, Republican candidate, wrote a formal speech of acceptance in lieu of the usual letter, under date of July 28, 1908; it considerably enlarged the impact of the platform. Candidates for the governorship of states sometimes write similar letters. A man of force may thus lay down an individual platform, and if elected may insist that the legislature accept his choice as proof that the people accept the sentiments of the letter. In general, politicians dislike to have candidates write letters during the campaign. See CAMPAIGNS, POLITICAL; CANDIDATE; COMMITTEES, PARTY; CONVENTION, POLITICAL; NOMINATING SYSTEMS; NOMINATION OF PRESIDENT. References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), 204; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. xxi; W. H. Taft, *Presidential Addresses and State Papers* (1910), 3–42. A. B. H.

LETTER OF MARQUE. A "letter of marque and reprisal" is a commission given by a government to a private vessel authorizing it to make reprisals on the vessels of another state. It is the public authorization to privateers and the issuance is an act of war. See CONFEDERATE STATES; DECLARATION OF PARIS; INTERNATIONAL LAW, PRIVATE. G. G. W.

LETTERS ROGATORY. Formal communications from a court in one state to a court in another state, requesting, for use in the court of the first state, testimony which may be procured within the other state by affidavit or other process. See CONSULAR SERVICE; INTERNATIONAL LAW; PRIVATE. G. G. W.

LEX FORI. The law of the court or forum. G. G. W.

LEX LOCI. The law of the place is ordinarily followed in cases of several descriptions. The *locus* may be according to place of contract (*lex loci contractus*), according to the place of the act (*lex loci actus*), according to place where the thing is (*lex loci sitae*), according to domicile (*lex loci domicilii*), etc. See LEX FORI. G. G. W.

LIBEL. In admiralty (and ecclesiastical) courts a written statement filed by the plaintiff setting forth the injury on account of which he sues, and the relief he asks. At common law, anything written, printed or expressed by signs or symbols, which defames or tends to bring into ridicule or contempt, the person, character or reputation of another, which is published without lawful justification or excuse. A criminal libel is one which is punishable criminally. Generally speaking libels of this kind are such as tend to excite a breach of the peace. H. M. B.

LIBEL AND SLANDER. See FREEDOM OF SPEECH AND OF THE PRESS.

LIBERAL REPUBLICAN PARTY. This party appeared in 1872, caused by schism in the Republican party (*see*), arising from a disaffection against Grant's administration. The movement began in Missouri in 1870, led by Carl Schurz (*see*) and B. Gratz Brown, where the Republican party split on the question of removing the political disabilities of those who had favored the South in the Civil War. Within the Republican party, in the country at large, there was a demand for tariff reform, a demand for civil service reform, led by Carl Schurz, Samuel Bowles and General J. D. Cox; a fear of centralization and a departure from old constitutional standards, represented by such men as David Davis, John M. Palmer, and Lyman Trumbull, of Illinois; and a desire to eliminate the southern question as the dominant issue in politics and to try amnesty and conciliation rather than force with the South— a desire voiced by such men as Charles Sumner, Horace Greeley and Charles Francis Adams. In addition, certain Senators, notably Fenton of New York and Curtin of Pennsylvania, were offended because Grant had turned over the whole federal patronage in their states to their rival Senators, Conkling and Cameron. All these leaders, together with powerful journals like the Chicago *Tribune*, the Cincinnati *Commercial*, the Springfield *Republican*, the *Nation* and the New York *Tribune* and the *Evening Post*, brought the weight of their influence to the bolting Liberal Republican movement.

The party held a mass nominating convention in Cincinnati, May 1, 1872. It arraigned

Grant's administration for personal favoritism and for keeping corrupt and unworthy men in office; demanded the immediate removal of all disabilities imposed on account of the "rebellion"; and demanded a thorough reform of the civil service. The convention was divided on the subject of the tariff and finally decided, on account of "irreconcilable differences," to "remit the discussion of the subject to the people and to the decision of Congress, without executive interference or dictation." The party nominated Horace Greeley, of New York, a high protectionist, for President, and B. Gratz Brown, of Missouri, for Vice-President, nominations subsequently ratified by the Democrats. The ticket of the combined parties was ingloriously defeated in the elections of 1872, and with the close of the campaign the party came to an end, some of its leaders rejoining the Republican party while many of them became permanently identified with the Democratic party.

See Democratic Party; Republican Party.

References: J. F. Rhodes, *Hist. of U. S.* (1906), VI, 412–425; E. Stanwood, *Hist. of the Presidency* (1898), ch. xxiv; F. M. Curtis, *Hist. of the Republican Party* (1904), II, ch. i; W. A. Dunning, *Reconstruction* (1907), ch. xii.

James A. Woodburn.

LIBERAL UNIONISTS. The Liberal Unionist party was formed of Whigs, Liberals and Radicals who broke away from Gladstone on the question of home rule for Ireland. Gladstone introduced his measure on April 8, 1886. Between the first reading and the second reading stage which began on May 10, there was a great demonstration against the bill at Her Majesty's Opera House in London at which Hartington, Goschen and others of the Liberals opposed to the bill spoke from the same platform as Salisbury and other Conservatives who also opposed home rule. A struggle for the control of the National Liberal Federation resulted in the Federation's going to the support of Gladstone, although Chamberlain captured the Liberal Two Thousand, the local organization in Birmingham. The division on second reading was on June 8; and in the majority against the bill there were 93 members from the government benches. The Liberal Unionists at once organized a central association in London and also local associations in many of the constituencies then represented by Liberals who had voted against the bill. At the general election which came within a month, there was a compact between the Liberal Unionists and the Conservatives, to the effect that Liberal Unionists were not to be opposed. Seventy-four Liberal Unionists were returned to the Parliament of 1886–1892. The Liberal Unionists then sat on the opposition benches with the Liberals, and Goschen was the only member of the party who crossed the floor and joined the government ranks. He was Chancellor of the Exchequer from 1886 to 1892. There was a coalition of the Liberal Unionists and Conservatives in 1895, after the defeat of the Rosebery Government at the general election. Thereafter, there was no dividing line between the two wings of the Conservative party, although in London, Edinburgh and Birmingham there remain still Liberal Unionists organizations; and, at the general election of December 1910, 49 members were returned who were classed in the poll books as Liberal Unionists. See House of Commons; Conservatives; Party Government in Great Britain.

References: J. Morley, *Life of Gladstone* (1903), III, chs. v. vi, vii; A. Mackintosh, *Joseph Chamberlain* (1906), ch. xvi.

E. P.

LIBERALS, BRITISH. The Liberal party, in the second decade of the twentieth century, is in the third stage of its evolution. Its first stage was from the French Revolution to the Reform Act of 1832; its second from 1832 to 1886; and its third stage began in 1886 when Liberals and Whigs parted company. In the first period—1789–1882—the Whigs by reason of their numbers in the House of Commons, were the controlling force in the party of progress and of opposition to the reactionary Toryism of Pitt and Castlereagh. They represented the aristocratic element in Parliament and the country that was opposed to the war and to the repressive domestic policy of Pitt; and it was in this period that the term Radical was added to party terminology. The term originated with Pitt. It was thenceforward accepted by politicians in and out of Parliament who were not of the Whig party, and who desired more radical political and social reforms than the Whigs were willing to advocate. No general term, except that of reformers, was applied to the two divisions in the party of progress from the French Revolution to 1832; the reformers were known as Whigs or as Radicals according to the groups in and out of Parliament with which they acted; and the Whigs were continuously careful to keep sufficiently aloof from the Radicals to prevent any complete merging of the two groups that were in favor of Parliamentary reform, the repeal of the Test Act, Roman Catholic emancipation, and retrenchment in national expenditures—the four questions most agitated during this era of Radicalism.

The term Liberal came into vogue soon after the Reform Act. It was not generally used to describe the party of popular political progress until the Reform Act of 1867 and Gladstone's first administration of 1868. From 1832 to 1886 the term Liberal party included: (1) the Whigs, (2) Radicals, (3) Liberals, men who were more progressive than the Whigs but not willing to travel so quickly nor so far as the Radicals, and (4) from 1874 to 1886 a small but continuously increasing num-

ber of representatives of labor—all trade union leaders—who formed the Liberal-Labor group. The Liberal party of this period stood for the cause of liberty and progress. Trust in the people, as Gladstone once declared, was the guiding principle of Liberalism; and Liberalism in this period favored all liberty—political and religious—that its leaders considered to be consistent with security and order. The lead in public opinion and in all movement for larger powers of self-government, national or municipal came in these years from the Liberals and Radicals. The Whigs were much less active in movements for reform than they had been in the days of Fox, Grey and Durham. They held aloof from Radical agitations in or out of Parliament; and between 1867 and 1886 the Whigs and the Liberals and Radicals were falling apart. Two years before the break-up of the Liberal party of 1832–86 Salisbury, who was then leader of the Conservative opposition, stated with truth that the party was held together rather by the dexterity of Gladstone than by harmony of opinion and aims: and by 1886 other causes besides home rule were moving to make an end to the working alliance between Whigs, Liberals and Radicals that had its beginning in the days of the French Revolution.

The third stage of the Liberal party, although it began in 1886, did not take on its present day aspects until 1906; for, except for the three years 1892–95, the Liberals were in opposition from 1886 to the end of the Conservative régime in 1905. The Liberal-Labor group disappeared in 1906, and an independent Labor and Socialist group with forty members in the House of Commons took its place. The moderating force of the Whigs was now gone; and for it was substituted a new propelling force—more democratic than any previous force in British politics. The influence of these changes—the desertion of the Whigs, and the incoming of the Independent Labor party—is obvious in the legislation of this new and third stage of the Liberal party. The parliament act of 1911—the Lords' Veto Act—which could not have been passed while the Whigs were of the Liberal party, is typical of the new attitude towards constitutional reform. The vested interests of the established church, of land-owners and of the liquor business, of university voters and of plural voters in county divisions, are much less regarded than they were by the Liberal party of 1832–1886. The old age pension act of 1908 and the national insurance act of 1911 are typical of the social legislation of the Liberals of this later period. Like the party of 1832–1886 present day Liberals are nominally opposed to privilege. None the less the party is not democratic; for it bestows baronetcies and peerages with the additions that the bestowal of these hereditary honors make to the governing and privileged class, quite as profusely as these distinctions are bestowed by the Conservative party, which nowadays is considered as traditionally the party of privilege.

See CONSERVATIVES; LIBERAL UNIONISTS; PARTY GOVERNMENT IN GREAT BRITAIN; TORIES, BRITISH; WHIGS, BRITISH.

References: C. B. R. Kent, *The English Radicals* (1899); R. S. Watson, *The National Liberal Federation* (1907); J. Morley, *Life of Gladstone* (1903). EDWARD PORRITT.

LIBERIA, DIPLOMATIC RELATIONS WITH. Liberia, an independent negro republic on the west coast of Africa, is the outgrowth of efforts of the American Colonization Society, founded in 1816, the purpose of which was to return to Africa the free negroes whose presence among the slave population was considered dangerous to both whites and slaves. The activities of the society were largely in the border-states, especially in Maryland. Between 1820, when the first lot of "repatriated" negroes was landed on the African coast by the agents of the society, and 1868, about 12,000 free negroes were colonized from the United States. To these, nearly 6000 were added by the United States Government, being the native Africans taken by the Navy from captured slavers. The British colony of Sierra Leone, founded in 1787 as a territory for freedmen, served as the pattern for the enterprise of the American Colonization Society. Sierra Leone, however, soon became British territory and in 1807 was erected into a crown colony.

The United States while subsidizing and otherwise aiding the colonization project, never attempted to make the colony a part of its territory. It was regarded by foreign powers as a *de facto* colony of the United States, but for its management no governmental responsibility was assumed. The governor was appointed by the Colonization Society and the colony was practically self-governing.

In 1847 the society relinguished its governing authority and a declaration of independence followed. The Republic of Liberia was recognized as a state by Great Britain in 1848 and subsequently by other European powers. The United States, however, took towards Liberia the same attitude as it had shown to the independent negro republic of Hayti. It refused to recognize the existence of a state organized and managed by free negroes until 1862.

From the beginning, the territorial claims of Liberia have been disputed by her neighbors, France and Great Britain.

Judged by European standards Liberian administration has been successful neither in preserving order nor in finance. In the interior the savage tribes are quite uncontrolled by the Liberian government. Contentions over boundaries, debts, and administration reached such a pitch that Liberians felt in 1908 that "France was absorbing their terri-

tory and Great Britain their government." The government of Liberia then asked the United States to establish a protectorate over the country and to guarantee its possessions, but the United States has not assumed such responsibilities.

See AFRICA, DIPLOMATIC RELATIONS WITH; COLONIZATION OF NEGROES; PROTECTORATES; SLAVE TRADE.

References: H. H. Johnston, *Liberia* (1906); J. H. T. McPherson, "Liberia" in Johns Hopkins University, *Studies*, IX (1901), 10; Am. Colonization Soc., *Annual Reports* (1810 to date), also pub. in *African Repository* (1825–1892); H. E. Wauwerman, *Liberia* (1885); E. A. Forbes, "Can the Black Man Stand Alone?" in *World's Work*, XVIII (1909); U. S. Commission to Liberia, "Report" in *Sen. Docs.*, 61 Cong., 2 Sess., (1909); R. P. Falkner, "U. S. and Liberia" in *Am. Jour. of Int. Law*, IV (1910). J. S. REEVES.

LIBERTY, CIVIL. Civil liberty is the liberty belonging to men in organized society. It is liberty defined, regulated and protected by the positive law of the state or recognized as existing under customary law. Looked at from the reverse side, it includes immunities as well as rights; that is, it consists of exemptions from the interference of the state in the domain set inside for individual action. It means not merely the absence of individual restraint, as Francis Lieber has remarked, "but liberty within the social system and political organism," the liberty "which plainly results from the application of the general idea of freedom to the civil state of man, that is, to his relations as a political being" (*Civil Liberty and Self Government*, 25). It may be contradistinguished from so called natural liberty or the liberty which belongs to men in a state of nature, undefined and unprotected by positive law. Thus Blackstone conceived civil liberty to be nothing more than natural liberty so far restrained by human law as may be necessary and expedient for the general advantage of the public. Following Rousseau, Locke and Hobbes, he held that when man passed from the state of nature to organized society he surrendered a portion of his natural liberty and received in exchange civil liberty, that is, liberty defined and protected by the state. Civil liberty may also be contradistinguished from political liberty, or the liberty of participating in the establishment and administration of government, the choosing of public officials and in the making of the laws.

Among the civilized states of the world there is now a substantial consensus of opinion and practice concerning the content of civil liberty. It is universally held to embrace not only freedom of person, but security of private property, equality before the law, freedom of worship, freedom of speech and of press and freedom of assembly. The United States Supreme Court has interpreted personal liberty as guaranteed by the Fourteenth Amendment to mean not merely freedom from physical restraint, but freedom in the enjoyment of all one's faculties in all lawful ways, the liberty to earn a livlihood by any lawful calling, the liberty to live and work where one wills, and to enter into all contracts which may be proper, necessary, or essential to the enjoyment of the above mentioned rights (Allgeyer *vs.* State of Louisiana, 165 *U. S.* 578).

In the United States the subject of civil liberty occupies a far more important place in the constitutional system than it does in any other country having a written constitution. The national Constitution and those of all the states contain numerous and elaborate provisions defining the liberty of the individual, and providing the means for its security and enjoyment; in short, they are not only instruments of government but constitutions of liberty.

See BILLS OF RIGHTS; CIVIL RIGHTS; CONTRACT, FREEDOM OF; FREEDOM OF SPEECH AND THE PRESS; LIBERTY, LEGAL SIGNIFICANCE OF.

References: W. Blackstone, *Commentaries on the Laws of England* (ed., 1890), ch. i; J. W. Burgess, *Pol. Sci. and Constitutional Law* (1891), I, Bk. II, ch. i; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), chs. xiii–xiv, *Constitutional Limitations* (7th ed., 1903), chs. x–xiii; F. Lieber, *Civil Liberty and Self Government* (3d ed., 1891), chs. ii–iii; T. D. Woolsey, *Political Science* (1886), I, chs. i–ii. JAMES W. GARNER.

LIBERTY LEAGUE. Met in convention at Rochester, New York, in June, 1848, and nominated Gerritt Smith for President and Charles E. Foote for Vice-President. It was a radical Abolition body. See ABOLITIONISTS; SLAVERY CONTROVERSY. A. C. McL.

LIBERTY, LEGAL SIGNIFICANCE OF. Before the colonies declared their independence it had become a recognized principle of the common law of England that all English subjects were free; that is, the conditions of villeinage involving either a servitude to the owner of particular land or a personal servitude had disappeared, and all subjects were freemen and equal in their rights before the law (*see* SLAVERY). The colonists, as English subjects, assumed that they were entitled to the rights of freemen and proceeded to form constitutions with the view of guaranteeing to the people all the rights which they enjoyed as against undue encroachment on the part of the governments which were provided for in such constitutions. The continued enjoyment of such rights so far as they involved freedom of action as distinguished from rights of property constituted, as they understood it, personal liberty.

It seems to have been assumed that the liberty thus enjoyed was an inherent or natural right subject only to such restrictions as must necessarily be assumed under the social compact constituting the foundation for organized government. Although the social compact theory as the source of the authority of government has been abandoned for all practical purposes, nevertheless there seems to be a fundamental assumption in our whole constitutional system that personal liberty shall be interfered with only so far as the general welfare of the whole body of the people may require.

Civil liberty (*see* LIBERTY, CIVIL) has a somewhat more definite meaning. The term designates "that condition in which rights are established and protected by means of such limitations and restraints upon the action of individual members of the political society as are needed to prevent what would be injurious to other individuals or prejudicial to the general welfare" (Cooley, *Constitutional Law*). This is liberty in its legal significance. It does not imply absence from restraint but freedom from restraint or interference with personal activity, physical, mental, or social, whether imposed by other individuals or organized government, except in accordance with general principles of law (*see* HABEAS CORPUS).

The "liberty" which is guaranteed in the Federal Constitution as against federal or state abridgement (Amendments, Articles V, XIV) is no doubt the civil liberty above described, although it has been said to include more than mere freedom from unlawful physical restraint and to extend to freedom of contracting for personal services and adopting and following such callings or pursuits as may be thought desirable (*see* CONTRACT, FREEDOM OF). But in view of the fact that specific provisions are found in the various constitutions for protection against governmental interference with religious freedom and freedom of speech and the press, and that freedom of contract is protected as a property right, it may be doubted whether the general constitutional guarantees of liberty include more than is covered by the general term "civil liberty."

See LIBERTY, CIVIL.

References: F. Lieber, *Civil Liberty and Self Government*, (3d ed., 1894); W. Blackstone, *Commentaries on the Laws of England* (Hammond, Ed., Notes, 1890), Bk. I, ch. i, 158, 348–358; J. Wilson, *Jurisprudence* (Andrews, Ed., 1896), II, ch. xii; H. C. Black, *American Constitutional Law* (3d ed., 1910), 522–527; W. W. Willoughby, *Constitutional Law* (1910), II, 872; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 246; C. E. Shattuck, "True Meaning of the Term Liberty" in *Harvard Law Review*, IV (1890–91), 365.

EMLIN MCCLAIN.

LIBERTY PARTY. The Liberty party existed from 1840 to 1848 as the first political organization to act against slavery by party methods and to advocate anti-slavery governmental action. It was formed April 1, 1840, at Albany, by a group of abolitionists whose consciences would not longer permit them to support parties or candidates not avowedly opposed to slavery, and who separated from the non-political or so-called "Garrisonian" Abolitionists, to form a new anti-slavery organization. The policies advocated by the Liberty party were for the most part those ultimately adopted by the Republican party twenty years later. Admitting the impregnable existence of slavery in the states, the Liberty party called for the repudiation by the Federal Government of all responsibility for the institution, through abolition in the territories and the District of Columbia, the repeal of the fugitive slave laws, and the refusal of protection to slave property on the high seas. It also demanded the exclusion of slaveholders from public office under the state or federal governments. To these principles, many Liberty men added far more radical doctrines, such as the unconstitutionality of slavery in the states, and the duty of all men to disobey the fugitive slave provisions of the Constitution (*see* FUGITIVE SLAVES).

Owing to its pre-occupation with a single issue and to the radical character of its leaders, the Liberty party, in spite of vigorous and prolonged efforts, did not succeed in building up a strong organization or attracting enough voters to win a single electoral victory. During the eight years of its existence, it never cast over four per cent of the vote in the free states. It affected national politics once only, in 1844, when it held the balance in New York and Michigan and has been charged with securing Polk's election by refusing to abandon Birney (*see*), its own candidate, for Clay (*see*), in response to the appeals of anti-slavery Whigs. But is it difficult to see how men, who honestly accepted the Liberty platform, could be expected to vote for a slave-holder with Clay's record on slavery questions. After 1846 the progress of the party ceased and it showed a tendency to divide into factions, or, in places, to join in coalitions with anti-slavery Whigs or Democrats. In 1847 a national convention nominated John P. Hale for President; but in 1848 the Free Soil excitement swallowed up the party and most of the prominent leaders coöperated in the formation of the Free Soil party (*see*) at Buffalo. The principal contributions of the Liberty party to the progress of the anti-slavery cause were a group of energetic agitators and local leaders, some of whom, such as S. P. Chase (*see*), rose to national distinction in public life, and a body of anti-slavery political doctrine which was abundantly employed by the later Free Soil and Republican parties.

See ABOLITIONISTS; DEMOCRATIC PARTY; FREE SOIL PARTY; SLAVERY CONTROVERSY; THIRD PARTIES; WHIG PARTY.

References: H. Wilson, *Rise and Fall of the Slave Power* (1874), I, II; W. Birney, *James G. Birney and his Times* (1890); A. Willey, *Antislavery Cause in State and Nation* (1886); A. B. Hart, *Salmon P. Chase* (1899), *Slavery and Abolition* (1906), 317.

THEODORE CLARKE SMITH.

LIBRARIES, PUBLIC. **Basis.**—A public library as here meant is one in which all and the same privileges offered to any person are free to all persons in the community because the local government appropriates money for its entire or partial support. Within the past fifty years such a library has come to be thought a part of the necessary social and educational equipment of every community. The burden of proof now tends to rest upon the local government which omits suitable library provision for its people; provision which ranges from the modest building of the hamlet or village to the great city system with its palatial central building and collection, and from ten to forty branches.

The public library is essentially a democratic institution. No city official, no individual may impose one upon the people; rarely is power to create a library lodged in a council, committee or board. Most library laws require initiative in the form of a petition from voters or taxpayers, or a decisive popular vote. Even gifts and bequests of libraries to be effective require official acceptance and ratification by the people or their accredited representatives.

Administration.—The free public library is formally attached to the machinery of government in various ways. The earliest and commonest organization is a library board (of from five to thirteen men or women) created by the city or village, its members usually appointed by the mayor, occasionally elected by the people, of which such city officers as the mayor, and superintendent of schools are often members *ex officiis*. Less frequently, but more and more as library work extends, the political unit is the county, town, township or school district which establishes and maintains the library, and whose supervising officers appoint its governing board. Again the government and administration of the library may be lodged with a private association or corporation regularly organized under proper laws with which the local government formally contracts to provide library privileges for its citizens.

This condition is common in older parts of the country where the earliest libraries (athenaeums) were those formed by such associations which though not originally free yet formed the seeds from which free libraries have sprung and, in many cases, have been continued as the governing bodies of the new public libraries. A semi-official character is given to this corporate governing board when the city, appropriately to safeguard its interest, appoints a number of the trustees or reserves a revisory power over their acts. When the school district is the political unit which maintains the library the government is usually lodged with the school board or committee.

Effect of Commission Plan.—The advent of the commission (*see*) plan of municipal government has disturbed the customary and generally satisfactory method of library control by a small, select board specially charged with this particular duty and it is not yet wholly clear that anything better or even as good is to be substituted. Even in boss ruled cities, tradition and public opinion have usually availed to keep the hands of the machine off educational interests and to secure the appointment of interested, able and non-partisan persons to the separate boards which manage libraries and schools. Under the commission plan it seems likely that the interest, influence, competence and zeal hitherto exerted exclusively for the public library by a select board is to be lost and replaced by the scantier and probably more perfunctory attention from one commissioner or at most a small commission to which the welfare of the library is but one minor concern among many.

After several years' experience with commission government in many American cities, library executives who have most studied the results seem agreed that either a separate library board must be retained, its members appointed by the city commissioners, or (less promising yet better than pure commission government) the library must be placed with the schools, under the charge of an expert municipal commissioner of education or superintendent of schools. An admirable presentation of this matter is in the *National Municipal Review*, April, 1913.

Employees.—Like teachers in the public schools, library employees are usually exempted from the control of municipal civil service systems and library experts are pretty well agreed than an independent, graded library service with high standards strictly and wisely administered within the library will bring far better results than any merit system of appointment and promotion imposed upon the library from without.

Funds.—Funds to support the public library are commonly raised by direct taxation as a part of the regular municipal tax levy, the library rate being rarely less than a half mill or more than two mills on the dollar. Sometimes the public library enjoys a special tax as in Massachusetts where the dog (*see*) tax in every town is by law so applied; in some cities police court fines, certain licenses and fees are used by the library. In the absence of a specific tax rate or source of income, li-

brary appropriations are often made in round sums from what is called the "general" fund. American cities have been increasingly liberal with libraries in the past thirty years and the powers behind the purse strings usually seem more concerned that the sums granted shall be wisely spent than with the total amounts asked for. For initial or extraordinary expenses, city bonds are frequently sold.

Functions.—While the public library primarily and properly classifies as an educational institution, its work may be deseribed accurately as both educational and recreative. Its ministry to the large demand made on it for light reading in the form of fiction and magazines is a wholly legitimate recreational work, provided of course that the books supplied be worthy in form and content.

The library's chief work, however, is educational. It is the natural ally of such municipal activities as schools, parks, playgrounds, hospitals, fire engine houses, etc., through which it finds effective channels for the circulation of its books. Its reach is, however, far wider than any schools, which hold their scholars but for fifteen or twenty years at most, while the library offers a continuous, elective education in every subject to young and old.

Beyond this there is an important and fruitful social work which the library seems to be doing rather better than the school. It is the centering within library walls and influence of the work of such agencies for popular education as lectures, clubs, exhibits, storytelling; in short, serving as the social center for a town or neighborhood in all work for which the book may be the center or the goal.

See EDUCATION AS A FUNCTION OF GOVERNMENT; LEARNED SOCIETIES; MUSEUMS, PUBLIC.

References: A. E. Bostwick, *Am. Pub. Library* (1910); U. S. Bureau of Education, *Statistics of Public Society and School Libraries* (1910); *Am. Year Book, 1910*, 806, *ibid, 1911*, 830–833; *ibid, 1912*, 818; Am. Library Association, *Manual of Library Economy* (1911–13); E. A. Hardy, *The Public Library, Its Place in Our Educational System* (1912).

J. I. WYER, JR.

LIBRARY COMMISSIONS, STATE. Library commissions are provided for in most states; made up of a few members, usually non-partisan. The members draw no salary. The duties are largely administrative. New York and Wisconsin have been the leaders in the movement. The commission in most states is under the education department, although there is an effort to have separate library departments established in some states. See LIBRARIES, PUBLIC. **References:** *Library Journal; A. L. A. Papers.*

T. N. H.

LIBRARY OF CONGRESS. The library of Congress, established 1800, was located in the Capitol until 1897, when its main collections were transferred to a separate building, which, with recent additions, can accommodate about 3,000,000 volumes and 1000 readers. Primarily intended for the service of Congress, it is now extensively used by all departments of the government and is virtually the national library through its receipt of the products of the American press by copyright deposit, its international exchange relations with foreign governments, and the comprehensive character of its collections and development of activities by which they are made available to libraries and investigators throughout the country (*e. g.*, card distribution, bibliographical service, inter-library loans). It is classed by law under the legislative department and maintained by annual appropriations (for 1912–13, $587,905, including $100,000 for purchase of books and periodicals). The librarian of Congress is appointed by the President, by and with the advice and consent of the Senate. Copyright registration has been under his direction since 1870. The establishment of a legislative reference department to collect information and provide expert assistance in connection with legislation has recently been proposed. For reference use, the library is free to any reader over sixteen.

The collection is now the largest in America and the third in the world. It comprised, on June 30, 1912, about 2,012,393 printed books and pamphlets (including the law library, a part of which still remains in the Capitol), 129,123 maps and charts, 591,632 pieces of music, and 349,745 photographs and prints. It is specially strong in American history, biography and genealogy, social and political science, laws and public documents of all countries, American newspapers, and bibliography. Extensive collections of Slavic, Scandinavian, Jewish, Sanskrit, Chinese and Japanese literature and the monumenta of European history are among recent accessions. It has also valuable scientific collections which supplement the special libraries of the various scientific bureaus in Washington. It is rich in collections of manuscripts for American history and in maps and atlases.

See LIBRARIES, PUBLIC.

References: W. D. Johnston, *Hist. of the Library of Congress* (1904), I; W. W. Bishop, *Library of Congress* (1911), reprint of *A. L. A. Manual of Library Economy*, ch. ii; H. Small, *Handbook of the Library of Congress* (1909); Library of Congress, *Annual Reports* (1897 to date, particularly 1901), *Library of Congress and its Work* (1907), *Publications Issued since 1897* (1913).

J. DAVID THOMPSON.

LICENSE TAXES ON OCCUPATIONS. A license tax is a payment which the law makes a condition to the transaction of business or to the following of a profession, trade, or any industrial calling. It is in part a fee to pay

for the clerical labor of issuing and recording the license or permit, and of supervising the privilege thereby granted; and in part a tax. Such taxes are imposed both for the sake of revenue and for the regulation of the trades in question. Sometimes the receipts are known as privilege taxes, and often it is difficult to distinguish them from special property taxes or business taxes. So too they may be imposed as a method of reaching corporations. For example, in Connecticut every bank, insurance, trust, and bridge, company must pay a tax of one per cent on the market value of its stock, and in Illinois foreign insurance companies must pay a two per cent tax on gross premium receipts. All of the southern states except South Carolina have an extensive system of state license taxes.

The most familiar example of license taxes on occupations is that imposed upon liquor dealers. This annual license fee varies greatly, depending upon the public demand for control and restriction; in New York it ranges from $150 to $1200; in Boston from $1500 to $2800; and in Chicago there is a uniform rate of $1500, to be paid by saloons, hotels, restaurants and clubs alike. In Massachusetts one-fourth of the revenue thus collected goes to the state, and the remainder to the town. In Connecticut the amount is divided equally between the towns and the county.

In Philadelphia, dealers in merchandise pay, in addition to a low personal property tax, a special tax or license based on the volume of business transacted annually. Retailers pay at the rate of one dollar per thousand dollars; wholesalers at the rate of fifty cents per thousand dollars; exchanges and boards of trade, twenty-five cents per thousand dollars. About $350,000 is thus collected, all going to the state treasury. In St. Louis, merchants pay, in addition to a tax on merchandise, a city license of one dollar per thousand dollars of given sales.

Peddlers are generally subject to a special license. In some states the amount depends upon the estimated volume of sales; in others, upon the size and character of the district covered; and in others, upon the character of the goods sold. Special taxes are also often laid upon auctioneers, and cab and hack drivers.

See Examinations for Employment and Professions; Licenses for Callings; Professions and Callings, Public Regulation of; Taxation, Subjects of.

References: U. S. Census Bureau, "Wealth, Debt and Taxation" in *Special Report*, 1907, 639–642, 646; C. J. Bullock, *Selected Readings in Public Finance* (1906), 337–349.

Davis R. Dewey.

LICENSES FOR CALLINGS. The practice of requiring a state or municipal license to pursue any stated calling is almost universal in South America and in southern Europe, but is opposed to the whole theory of the common law, which recognizes as normal freedom of trade throughout the realm; that is to say, the right of any person to practise any ordinary trade, not based upon a state monopoly, or to exercise any lawful calling. The licenses exacted by the trade guilds, although very old historically, were hardly more than permitted by the common law, which, indeed, in early statutes, began to regulate the guilds to some extent, as by requiring that they should have no unreasonable by-laws, and should not combine to force others from a trade. Nevertheless, the Crown always attempted as a means of taxation to grant licenses or charters, which were usually accepted because they carried with them a monopoly, and as such were denounced under Elizabeth and finally destroyed by legislation under James I. The matter of licenses for professions based on examination and required in the interest of the general public is elsewhere discussed (*see* Examinations for Employment and Professions). The license to solemnize marriages is usually conferred upon ministers by statute. Arbitrary licenses are required avowedly for purposes of taxation by state or city; or, as in the case of peddlers, push-cart vendors, newsboys, etc., to bring irregular callings under police supervision. The licenses required of liquor dealers involve additional considerations (*see* Liquor Licenses). The practice of imposing licenses for ordinary callings exists largely in the southern states, which have comparatively few sources of taxation; indeed, the constitutions of one or two states provide that all trades in that state shall be forever taxable. In some states there is a list of sixty or seventy occupations which cannot be exercised without the payment of a small tax or license fee to the state, city or town; and the practice is probably increasing; but except for some police reason, hardly as yet exists in the North. See Examinations for Employment and Professions; Labor, Relation of the State to; Liquor Licenses; License Taxes on Occupations. Reference: F. J. Stimson, *Am. Statute Law* (1896), I, § 6130.

F. J. S.

LICENSES, LIQUOR. See Liquor Licenses.

LIEUTENANT-GOVERNOR. The lieutenant-governor is provided for by the constitutions of over 30 states. He is always elected, under qualifications the same as those for the governor. In case of the death, removal or incapacity of the governor, the lieutenant-governor succeeds. In some states he may act as governor during the temporary absence of the governor from the state. Vacancies in the position of lieutenant-governor are filled in various ways. In Ohio, the governor fills the vacancy by appointment. The lieutenant-governor in

some states is a member of executive boards. His usual duty is to preside over the senate, and to vote only in case of a tie. However, in Indiana, Kentucky, and Missouri, he may debate in committee of the whole, and in the two former may vote in that committee. See GOVERNOR OF THE STATE; STATE EXECUTIVE. References: A. B. Hart, *Actual Government* (1908), 142; F. N. Thorpe, *Federal and State Constitutions* (1909); C. A. Beard, *Am. Government and Politics* (1911), 499.

T. N. H.

LIFE, PROTECTION OF. Guaranties for the protection of the life of the individual, be he citizen, subject, or alien, are found in all the state constitutions and in the Federal Constitution (Amend. XIV, Sec. i). These guaranties are specific with reference to forms of procedure in criminal prosecutions for offenses which may be punished with death, and general to the effect that no person shall be deprived of life without due process of law, these specific and general provisions being usually combined in one declaration (Const. Amendment V). By the Fourteenth Amendment the due process of law guaranty is imposed upon the states. As bills of attainder are prohibited both to the state and federal (Art. I, Sec. ix, ¶ 3) governments (*see* ATTAINDER, BILL OF), no person may be deprived of his life by lawful action of the government in any of its departments without due form of procedure in the courts save in the emergencies of military operations, conducted by the Federal Government under the power to declare war, raise and support armies, provide and maintain a navy, make rules for the government and regulation of the land and naval forces, provide for calling forth the militia to execute the laws of the union and suppress insurrections and repel invasions, and to provide for organizing, arming, and disciplining the militia (Art. I, Sec. viii, ¶¶ 11–16), and by the states not inconsistently with the prohibition that they shall not keep troops or ships of war in time of peace or engage in war unless actually invaded or in such imminent danger as will not admit of delay (Art. I, Sec. x, ¶ 3). (As to military and martial law, *see* MILLIGAN CASE.) These constitutional guaranties are founded upon the limitations of governmental power found in Magna Charta. (*See* W. Blackstone, *Commentaries*, I, 127–130.)

By the common law, recognized in this respect in all the states, life is regarded as the highest of personal rights. The unlawful taking of it is made a crime of the highest magnitude which may be punished with death save in those states in which capital punishment is entirely abolished; and the extremest exercise of the right of self-defense is recognized as proper against unlawful violence imperiling the person's own life or that of a member of his family or any other person to whom he owes the obligation of personal protection. As a civil injury to the relatives or the estate of one whose life is unlawfully taken by another, the infliction of injuries resulting in death was not the basis for recovery of damages by the common law of England as it existed prior to independence; but statutory provisions for the recovery of damages in such cases have been adopted in practically all of the states.

See BILLS OF RIGHTS; DUE PROCESS OF LAW. Reference: W. Blackstone, *Commentaries* (Hammond, Ed., Notes, 1890), III, 194.

EMLIN MCCLAIN.

LIFE-SAVING SERVICE. The life-saving service for purposes of administration is placed under the Treasury Department. A humane society in Massachusetts established a life-saving service there as early as 1789. In 1849 Congress made a small appropriation for it. For some time it was connected with the revenue cutter service. The present system was established in 1878. There are 227 stations of which 165 are along the Atlantic coast, 45 on the Great Lakes, one on the Ohio at Louisville, Kentucky, 8 on the Gulf of Mexico, and 8 on the Pacific coast. The stations on the Atlantic and Gulf coasts are open from the first of September in each year until the first of the succeeding May, those on the Lake coasts from about the 15th of April to about the 15th of December, while the "active season" on the Pacific coast is left to the discretion of the General Superintendent. There is a General Superintendent over the entire service, and a district superintendent over each of the thirteen districts. There are 290 keepers of stations, who receive as annual salaries a total of $276,800. In addition, there are several crew and surfmen maintained at each station. Many lives are saved each year by the service and many vessels are warned off by the patrol and prevented from wreck. The General Superintendent of the Life-Saving Service reported 7,177 persons saved from 1,730 vessels that suffered casualty during the fiscal year ending June 30, 1912. See LIGHTHOUSE SYSTEM; SHIPPING, REGULATION OF. Reference: U. S. Secretary of Treasury, *Annual Reports.*

T. N. H.

LIGHTHOUSE SYSTEM. The lighthouse system, along with the life-saving service (*see*), and the revenue cutter service (*see*), has the purpose of aiding navigation and saving life on the sea. Lighthouses are built at danger points, and the powerful lights can be seen for many miles as a warning to vessels. In a few places where it is impractical to build lighthouses, light ships are used. For warning in dense fogs, fog horns and sirens are set up on or near the light houses. The structure of the lighthouses built offshore is usually steel tubular. In the appropriations for the construction, Congress commonly limits

the cost, although some cost more than $100,000. There are several thousand lights and signals.

In the first Congress there was an act passed (1790) providing for lighthouses: thereafter the lighthouses were under the Treasury Department. In 1882 a lighthouse board was created still under the Treasury Department, composed of two naval officers, two engineers, and two civilians of scientific attainment, with the Secretary of the Treasury *ex officio* president.

By act of Congress, June 17, 1910, the system was reorganized as the Lighthouse Bureau of the Department of Commerce and Labor, with a commissioner at the head, appointed by the President. In each of the nineteen districts, is a district inspector, a force of clerks, constructing engineers, and superintendents of naval construction.

See LIFE-SAVING SERVICE; SHIPPING, REGULATION OF.

Reference: U. S. Commissioner of Lighthouses, *Annual Reports.* T. N. H.

LIGHTING, ELECTRIC

Types of Lighting.—The modern art of electric lighting which began with small primary batteries as a source of current, a hundred years ago, now derives its electrical energy from dynamos capable of maintaining at full incandescence as many as a million standard lamps. Early recognized by pioneer investigators such as Davy, the principles upon which the industry is based have varied in their methods of application. The three methods of employing electricity in illumination have been: (1) the consumption of various substances, chiefly carbon, in the gap between two points across which the arc jumps; (2) the electrifying of vapors or gases in glass or quartz tubes; (3) the bringing up to a white heat of filaments of carbon or metal sealed in glass bulbs from which the air has been exhausted to a high degree.

In the United States, the industry began about 1870 with the introduction of "open arc" lamps in series, supplied with energy from small direct current dynamos of high voltage, at a pressure dangerous to human life. These lamps were fed through poorly insulated, overhead circuits, and were often raised in groups on towers, to a considerable height above the ground. Gas lamps were rapidly displaced by them on the streets of the larger cities, and today there are some 6000 municipal and private systems of this kind.

Direct and Alternating Currents.—Meantime in the early eighties, the incandescent lamp was perfected, and the electric light thus "subdivided" or adapted to interior use, at once enjoyed enormous vogue and popularity within the restricted urban areas that could be supplied from the expensive low pressure networks of heavy copper, placed chiefly underground. This great advance was aided by the introduction, on the same circuits, of electric motors, by which the utilization of the neglected alternating current was carried to most scattered consumers with all the advantages of such service, cheaply and reliably. The great national problems of conservation (*see*) date from about 1890, when electricity thus gave value to the remotest water powers and poorest coal beds, and compelled the public to consider their preservation.

Today, in all American cities, current is generated by alternating dynamos, which deliver the energy in the form of safe, low, potential, direct current to the consumer or to reserve storage batteries. Quantities of the alternating current, nevertheless, go unchanged to the consumer. The standard potentials of lighting circuits are 110 and 220 volts, but "out on the line" the potentials run as high as 110,000 to 140,000 volts, while "aerial track" for the current may sometimes stretch for 250 miles.

Modern Public Systems.—For many years, on its long separate circuits, the open arc reigned supreme for public and store lighting; but has been virtually replaced by the "enclosed arc," of lower economy, but greater whiteness and steadiness of light. This, in turn, is being challenged by the "flaming arc" or by the "luminous" and "magnetite" arcs, all now in extensive use, and distinguishable by their intensity, color, or brightness. Nearly one hundred American cities have adopted a new system of ornamental street lighting of tungsten filament incandescent lamps placed in clusters on low ornamental posts, with one, three, or five lamps in separate frosted globes. One of the latest examples is Atlanta, Ga., with 239 ornamental posts, distributed over 13,000 feet, at a cost to the city of $45.00 per post annually, for 2000 hours burning. In some cities merchants' associations pay for the installation and its maintenance; in others this cost is divided between the city and the merchants benefitting; in some cases the city levies a special tax to cover both items. The thoroughfares in New Haven are probably, the most evenly and most brilliantly lighted streets in America with the low post magnetic arcs.

The third method noted above, "vacuum tube" lighting, is of late practical genesis. In most of these lamps, mercury, in some cases nitrogen, vapor has been employed; it is to be found in printing offices, store rooms, docks,

freighthouses, etc., and is strongly favored by photographers for quick work. An example is the huge government printing office in Washington. Mercury vapor quartz tubes have come into vogue in Europe.

With an annual increase of output of 15 to 20 per cent the central station lighting systems of the country find each year a smaller proportion of their income derived from illumination, because the miscellaneous uses in power, heat, deposition, metallurgy, trolleys, etc., drawing upon these common sources of current supply, are multiplying so rapidly.

Municipal Ownership.—Municipal ownership of electric light plants in the United States has not been generally successful. Constant and expensive changes in apparatus and methods necessitate a steady supply of new capital, and managerial ability of a high and expensive order. Hence private operation of central stations in America much surpasses the results in those parts of Europe where municipal ownership has vogue. The municipal plants in America exist chiefly in small towns and villages where private capital could not be induced to venture, although there are a few large public plants as in Chicago and Detroit, devoted to street lighting, or as in Seattle, doing a general business. The relatively small size and limited investment of municipal plants is such that in 1907, the 1,252 municipal systems in the United States had an income of $14,011,999 and the 3,462 private plants earned $161,630,339.

Lighting Franchises.—The central station industry is carried on ordinarily under the régime of franchises granted to the local companies, often associated with a contract for street lighting for a term of years. The interpretation of these contracts has frequently become a matter of dispute on various points, generally as to quality or quantity or regularity of the light supplied, but sometimes on other grounds. At Omaha it has been argued that the original franchise granted in the early eighties did not include the distribution of electrical energy for power as well as light. In other disputes, the substitution of modern forms of electric illuminant for older types has brought with it litigation as to the real equality of service in the change. The whole drift has been toward scientific measurement of the light given, or the energy used on the streets for illumination; and associated with this has been a steady downward revision of the scale of rates applied to the consumption of the private consumer.

Regulation and Rates.—One of the few things that has consistently lowered in price throughout a period of twenty five years is electrical energy in its various forms of application. This process began long before the creation of public service commissions to regulate rates; but the commissions are an important factor in determining the continuance of the process. Many of the older franchises were of short term, it being illegal in some states to make street lighting contracts for more than a year; but under commission control, the indeterminate franchise has become a preferred form, for under it a corporation giving good service can adjust its rates and plant extensions to a long period and thus distribute amortization charges that would otherwise bear heavily on rates made under franchises or contracts expiring at short intervals.

One of the leading questions of commission control in the electric lighting field has been how far it can safely be permitted to pass beyond regulation and assume management of the properties engaged in the industry. The border line is shadowy; the subject highly controversial. Meantime the commissions, generally, are exercising a salutary influence on capitalization, growth and methods, are insisting on equal and fair rates, are standardizing the systems of bookkeeping, are extending facilities as in breakdown connection for isolated plants, are safeguarding the accuracy of meters and broadly applying the control from which the customer derives confidence and good service while the corporation itself is unchecked in its reasonable profit and its natural expansion.

See Franchises, Corporation, Legal Aspects of; Municipal Ownership; Municipal Trading; Public Service Corporations; Water Power.

References: "Campaign for Improved Street Lighting" in *Electrical Review and Western Electrician*, Sept. 16, 1911; U. S. Bureau of the Census, "Central Electric Light and Power Stations, 1907" in *Special Report*, 1910; Public Service Commissions, New York, Massachusetts and Wisconsin, *Reports* (1909–13); Files of *Electrical World*, *Electrical Review* (1910–13); National Electric Light Association, *Proceedings* (1911–13); H. A. Foster, *Engineering Valuation of Public Utilities and Factories* (1912); Henry Floy, *Valuation of Public Utility Properties* (1912); *Am. Year Book, 1910*, 688, 689, *ibid, 1911*, 696, *ibid, 1912*, 563.

Thomas Commerford Martin.

LILY WHITES. The Lily Whites are Republicans of the South who desire to build up the party as a white man's party. They propose to overthrow the old policy of the Republican party as the only party for the blacks. They are opposed by the old time Republicans, the Black and Tans (*see*). In different southern states the Lily Whites have carried on the struggle for their principles with more or less success. In 1892, the Lily Whites of Texas declared that the regular Republican organization in that state had degenerated into a mob, and it called upon whites to form a new organization from which the blacks were excluded. They were unable to control the state

organization, and could not prevent the renomination of Harrison. Since the Democrats control the southern states, the greatest importance attached to the factions of the Republican party is the part played in the nomination of candidates for President. The Lily Whites have generally lost to the old time Republicans, but judging from the results in Louisiana in 1912 the Lily Whites are gradually gaining control of the party organizations in the southern states.

References: New Orleans *Picayune*, Jan. 25, 1912; New Orleans *Times-Democrat*, Jan. 25, (1898), 516; New Orleans *Times-Democrat*, Jan. 25, 1912. T. N. H.

LIMITATIONS, STATUTES OF. Statutes providing that no suits shall be maintained upon the causes of action named or described, unless brought within the time specified in the statute. H. M. B.

LIMITATIONS TO TAXATION. See TAXATION, LIMITATIONS TO.

LIMITED MONARCHY. See MONARCHY; STATES, CLASSIFICATION OF.

LINCOLN, ABRAHAM. Abraham Lincoln (1809–1865), sixteenth President of the United States, was born in Hardin county, Ky., February 12, 1809. In 1837 he was admitted to the bar, and began practice at Springfield, Ill. From 1834 to 1841 he was a Whig member of the Illinois legislature, and from 1847 to 1849 a member of Congress, opposing the Mexican War and supporting the Wilmot proviso. He was one of the founders of the Republican party in Illinois, and in 1858 offered himself as a candidate for the United States Senate. He was defeated by Douglas, but a series of joint debates, in which he compelled Douglas to discuss popular sovereignty and the Dred Scott case, made Lincoln one of the foremost exponents of Republican anti-slavery doctrine in the country. In 1860 he was nominated for the presidency by the Republicans, and elected by a sectional vote, receiving 180 electoral votes out of a total 303, but a popular vote of only 1,866,452 in a total of 4,682,069. The history of his first administration is the history of the United States during the Civil War; but his patience, farsightedness, and executive ability mark him as one of the world's greatest statesmen, irrespective of the particular problems with which he had to deal. He was reëlected in 1864, receiving 212 electoral votes against 21 for McClellan. On April 14, 1865, he was shot at Ford's theatre, Washington, by John Wilkes Booth, and died the next day. See CIVIL WAR, INFLUENCE OF, ON AMERICAN GOVERNMENT; PRESIDENT, AUTHORITY AND INFLUENCE OF; REPUBLICAN PARTY; SECESSION CONTROVERSY; SLAVERY CONTROVERSY. **References:** J. G. Nicolay and J. Hay, *Abraham Lincoln: A History* (rev. ed., 1900), Eds., *Lincoln's Complete Works* (1894); J. D. Richardson, *Messages and Papers of the Presidents*, VI (1897); W. H. Herndon and J. W. Weik, *Herndon's Lincoln, the True Story of a Great Life* (1889, new ed., 1892); J. T. Morse, *Abraham Lincoln* (rev. ed., 1898); H. J. Raymond, *Life and Public Services of Abraham Lincoln, with His State Papers* (1865); C. Schurz, *Abraham Lincoln* (1891). W. MacD.

LIQUOR LEGISLATION

Basis in Colonial Period.—The earliest liquor legislation in the United States was largely based upon fiscal considerations; the sale of intoxicants was a profitable business and therefore to be taxed. But if much of the colonial legislation was primarily for the purpose of laying "a duty of excise on strong waters," it was not unmindful of the necessity of placing certain restrictions upon the traffic as a matter of public safety. From the earliest days of American history, the laws have recognized, more or less clearly, the sale of intoxicants as an inherently dangerous traffic and therefore one to be subjected to governmental regulations. Among the earliest prohibitions were these against sale to Indians, while a variety of prescriptions governed the conduct of inns and taverns as safe-guards to the peace and morals of the community. The manufacture of liquor was, for a time, left more or less unregulated; but the business of retailing intoxicants was, from the outset, regarded as a quasi-public function. Being conducted almost wholly through inns and taverns, which were in the nature of public institutions enjoying special privileges, the equity of subjecting them to special regulations was not questioned. The right of a community to impose on the liquor traffic restrictions from which ordinary businesses are exempt has thus always rested upon the principle of the right of regulation where public peace and public morals are concerned. But the theory of the supremacy of the state in all matters pertaining to the liquor traffic was not reflected in most of the early legislation. Its basic principle was local self-government; the state might prescribe the general regulations to govern the traffic; but the right to grant licenses, expend excise moneys and supervise the sale of intoxicants was local.

Present Basis.—At the middle of the last century opinion concerning the relation of the

state to the liquor traffic changed markedly. The temperance movement, which at first had been a moral suasion movement, ended in new demands for restrictive law, the first fruits of which were various abortive attempts to secure local prohibition, succeeded by the enactment of state-wide prohibition in several states. In the fifties was ushered in a long series of experiments in liquor legislation, which more or less directly had their origin in a desire to diminish the evils resulting from intemperance. It was impossible that the old loose methods of dealing with the liquor traffic should be retained. Public opinion would no longer tolerate it. One may therefore say that the temperance movement has set a lasting mark upon all modern liquor legislation. Still, the great majority of the states have continued to legalize the liquor traffic, and the methods under which it is done may properly be considered first.

License Legislation.—The pivotal question in all license laws is the choice of the licensing authority. Whether the traffic is operated under high or low license and under lenient or strict regulations, the results for good or evil of the different systems depend in the end upon the character of the licensing authorities, their power, and manner of using it. Under licensing authorities who are unswayed by political and other influences, who have power to punish violations by suspension and revocation of selling privileges, and use it, and who, above all, regard not only the fitness of applicants for license but legitimate public demands, the various devices for counteracting intemperance, lessening temptation, etc., may become operative and wholesome. But experience teaches that under licensing authorities who serve the greed of the traffic or political ends, rather than the interests of the public, it matters comparatively little what are the statutory or local regulations or how severe the penalties for violation. The experiments with licensing authorities have usually taken three directions.

(1) Licensing by the Judiciary.—Thus in Pennsylvania, the judges of the court of quarter sessions issue liquor licenses and have power to revoke them. They are expected to have due regard to the character of the applicants and the public necessity for drink places. In Virginia, the circuit or corporation court of the county or city is the licensing authority. In Texas, the county courts issue licenses upon permits to apply for licenses granted by the comptroller of public accounts, who is required to scrutinize closely each application. In Delaware, the licenses must be approved by the courts before being issued. In Missouri, licenses are granted by the county courts.

(2) Licensing by Local Authorities.—In very large areas this important function is exercised by city councils, boards of county commissioners, boards of selectmen, boards of police, or by a locally or state appointed board of excise. In Michigan, for instance, township boards, or village and city councils pass upon applications for licenses, the application for which must be filed with the county clerk. In Massachusetts, licenses may be issued by local boards appointed by mayors, by the board of selectmen in towns and in certain cities (notably Boston) by a board of licensing commissioners appointed by the governor. Massachusetts thus exemplifies several kinds of licensing authorities.

(3) Licensing by Tax Authorities.—Many permits to sell are issued by a state excise commissioner or local authorities, the permits being in the nature of tax imposts rather than licenses. In New York a state excise commissioner issues tax permits. In Ohio, which also operates under a tax law, the control rests with local authorities.

Pennsylvania perhaps furnishes the best illustration of successful control of licensing by means of the judiciary. Notably good results have been obtained in Massachusetts from the experiments with the local excise boards appointed by the governor. The practice of permitting city councils, boards of police, county commissioners and other local governing bodies to issue licenses has not vindicated itself. Politically chosen bodies can not always escape pernicious political influences, and, therefore, are under temptation to relax vigilance and to neglect state and local regulations.

High License.—Another important feature of modern license legislation is the high license system, which may or may not be coupled with a statutory limitation of licensed places. States that had experimented with prohibition and discarded it were not content to return to the former system of low license which usually stood for a number of saloons far in excess of that needed to meet public demands and, generally, for a poorly regulated traffic. The high license method, which has gained favor in many states (*see* LIQUOR LICENSES) undoubtedly makes for better control; but not so much because of the larger license fees, which may be imposed chiefly for revenue, as because it has usually been accompanied by more effective and enforceable regulations. A high premium on the privilege of selling inevitably tends to reduce the number of saloons, but, more important, it insures applicants of a better character and greater financial responsibility. It is obvious that control of saloons is simplified when their number is restricted. Therefore high license has been reënforced in several states by statutory provision for the limitation of licenses. High license has as a rule been followed by stricter regulations of the hours of sale, and numerous prohibitions of different kinds.

Difficulties of License.—But success in regulating the traffic depends less upon minute statutory prescriptions than upon the authori-

ties from which the privilege to sell emanates, their attitude in consulting public interests, and their power to compel obedience to law. Regulative devices may prove mere irritants unless their soundness is proven; and the truth has long been demonstrated that liquor legislation which ignores manifest public demands will not be enforced, and that too severe repression of the legalized traffic paves the way for illicit selling. It is within the facts to say that the license laws of the United States as a whole are crude, unsystematic, bent upon the development of minor restrictions, and place faith in penalties rather than in the adherence to thoroughly tested principles. This is especially notable in the matter of licensing authorities and in the lack of provisions for encouraging the use of the lighter beverages instead of the more alcoholic.

Local Option.—A natural outgrowth of the desire to lessen the inevitable evils accompanying the sale of liquor was the adoption of local option, which may be defined as the principle of permitting the local community, whether it be a county, municipality, village, ward, precinct or other specified district, to decide for itself whether the sale of liquor shall be licensed or not. The principle (one of the few stable ones in liquor legislation) was operative long before it received statutory recognition in any state. During recent years, most states have incorporated it in their legislation (*see* LOCAL OPTION).

Difficulties of Local Option.—The success or non-success of this method of securing local prohibition depends mainly upon three conditions: (1) the unit to be affected; (2) the method by which the question is decided; (3) the length of time during which popular decision holds. If a unit in local option elections consist of little related parts, for instance, a county containing a city of some magnitude but also a large rural population, it may easily happen that the majority of the city's vote favorable to license is overcome by the rural vote favorable to local prohibition. Thus when a municipality is forced against its will to submit to the dictates of the rural vote, the enforcement of local prohibition rarely if ever succeeds. To have fair play local option must be the expression of the local community untrammeled by outside influences. Without exception, the question of license or no license is now decided by a simple majority vote. So evenly balanced may be popular opinion that a very few votes, or even a single one, may determine the issue. In such cases, public sentiment favorable to the enforcement of local prohibition is seldom strong enough to become effective. A fairer expression of public opinion and stabler conditions would result by requiring at least a two-thirds majority in order to change the policy upon the liquor question.

Elections on Local Option.—In most states, local option elections are held upon the petition of electors, usually a third or a fourth of the whole number. Unless the law specifies that elections must be held at stated intervals, the decision arrived at holds good until another election takes place upon a new petition. In Massachusetts and Vermont a local option vote is taken annually; in New Hampshire once in two years in towns and once in four years in municipalities; Missouri votes once in three years and Ohio may do so within that period. In the following states the results of a local option election hold for two years: Arizona, Colorado, Florida, Michigan, Montana, New York, Oregon, Texas and Virginia. The permanency thus given to the liquor policy adopted by popular vote varies greatly. A common argument for frequent elections is that it tends to keep alive the temperance sentiment of the community. On the other hand, annual changes from license to local prohibition or *vice versa* stand in the way of enforcement, afford no real test of either policy, and give constant play to political factors.

Advantages of Local Option.—That local option has vindicated itself as applied to rural communities is generally conceded. That local prohibition is not properly enforced in urban centers unless they have a safety valve in neighboring places under license is also common experience, but in such a case the policy does not receive an actual test. No adequate means have been found of preventing the importation of liquor into no-license territory for alleged private use, the only result being more or less illegal selling. Local option, especially with a county unit in elections, is much favored as a stepping stone toward state-wide prohibition.

Prohibition.—Of the 23 states which at some time adopted state-wide prohibition, only 8 have so far remained steadfast to this policy, and only three of those have had time to test the policy (Maine, Kansas and North Dakota), while in the remaining five states the prohibition laws date from 1907, 1908 and 1909 (*see* PROHIBITION).

In form, state prohibition laws do not differ materially, although one law may be considered more drastic than others in respect to penalties and the efforts to close up every avenue of liquor supplies.

Difficulties of Prohibition.—The experiments with prohibition have not made out their case. Prohibition has succeeded more or less perfectly where local option also succeeds—in rural communities. When applied to cities, prohibition has not proved capable of enforcement except spasmodically. The various expedients tried such as a state enforcement commission, the establishment of liquor agencies under state auspices for dispensing liquor for medicinal purposes, etc., all have failed to prevent illegal selling. No state with large urban population and great cities has retained prohibition for any length of time. Maine, Kansas

and North Dakota are largely rural communities, with but one city of any magnitude (Kansas City, Kansas), which is immediately adjacent to another large city under license. Always the question of enforcing prohibition ceases to be a moral issue and becomes a political one around which local elections center. The most eloquent testimony to the difficulties of enforcing state-wide prohibition is found in the endless amendments with which it is sought to strengthen the original act—the prescription of penalties, the provisions for "search and seizure," the appointment of special officials, etc. The enforcement of prohibition as well as of many other laws depends upon the force of public sentiment behind it. As yet it has not been demonstrated that any state in all its parts and especially in the cities will submit for any length of time to a prohibition régime. When the adoption of prohibition is compelled under the political lash or results from a manufactured rather than a real sentiment, the legislation is foredoomed to repeal, as the history of many states in prohibition legislation has shown.

Public Liquor Selling.—The experiments so far made in the United States with liquor selling directly under state or local community control have not been altogether successful (*see* LIQUOR, STATE DISPENSARY FOR). A fundamental difficulty attending this method is the distribution of the profits, which invariably have proved large, and when used to reduce taxation usually defeat the central purpose of public control, restriction. Nevertheless, the experience with local dispensaries in cities of Alabama, Georgia and North Carolina won for them much popular favor and proved, among other things, a valuable means of preventing excessive drinking among the negroes. Except in South Carolina, the dispensary experiments have not been carried on under adequate legislation. How far public control of the traffic is adapted to American needs remains to be proved. At the present time laws enabling a thorough test of it are lacking in all the states.

See DRUNKENNESS, REGULATION OF; GOTHENBERG SYSTEM; INEBRIATE ASYLUMS; PROHIBITION; and under LIQUOR and LOCAL OPTION.

References: H. Austin, *Liquor Law in the New England States* (1890); H. C. Black, *Treatise on the Laws Regulating the Manufacture and Sale of Intoxicating Liquors* (1892); Committee of Fifty, *Liquor Problem in Its Legislative Aspects* (1898); E. L. Fanshawe, *Liquor Legislation in the United States and Canada* (1893); Mida, *Digest of State Laws, and their Salient Features, and Court Decisions Affecting the Liquor Interests* (1899); J. Rowntree and A. Sherwell, *Temperance Problem and Social Reform* (1900), chs. iii–v, *Taxation of the Liquor Trade* (1906), I; J. Koren, *Economic Aspects of the Liquor Problem* (1899).

JOHN KOREN.

LIQUOR LICENSES. Until 1881, when the state of Nebraska adopted a system of high license, the licensing systems of the different states varied but slightly in essentials. Beginning in the eighties, the new methods of regulating the traffic have had the twofold purpose of limiting the number of places where liquor may be sold, and of providing for a stricter control of those remaining.

High License Systems.—At the present time about one-half of the states may be said to be under high license, or that high license is possible in them under the law. The amount of license fees varies greatly, as do also the restrictive features. For general purposes the high license systems may be classified as follows: (1) high license fees without special restriction as to number of licensed places and privileges; (2) high license coupled with a statutory limitation of the number of licensed places; (3) high license with statutory limitation of places, severe conditions of license, a stringent classification of licenses and consequent differentiation of the privileges conferred.

High License without Restriction.—So bewildering are the numerous details in which high license systems differ that only a few general illustrations can be given. Ohio provides an example of a state exacting large fees for the right to sell liquor, but without restriction as to number of places of sale or other stringent regulation of the privileges they may enjoy. It has a tax system by which local authorities impose a tax upon each place for the sale of liquor amounting to $1000 per annum. Although the high tax operates to keep down the number of places, it is an ineffective measure of control, because it is simply an impost levied by authorities that are not directly concerned with the enforcement of the law, nor with the prescription of conditions under which sales may or may not be carried on. The system of a high tax on the saloon traffic in New York has an advantage over the Ohio method in that a state excise commissioner issues the tax certificates, thus removing the business a step further from local politics.

High License with Restricted Number.—Another form of high license is exemplified by Pennsylvania where the amount of fees is regulated by the size of the town in which the traffic is carried on, and the licenses are issued by the judges of the court of quarter sessions, who not only have absolute power to revoke any or all licenses at the end of twelve months, but are expected to scrutinize the character of the applicant and have due regard to the needs of the community in licensing new places.

High License with Restricted Sales.—The third class of high license systems is illustrated by Massachusetts. Here the minimum fee for selling all kinds of liquors to be drunk on the premises is fixed at not less than $1000 per annum, to which the local licensing author-

ities may add an indefinite amount. Saloon licenses are limited to one to 1000 inhabitants outside Boston and one to each 500 inhabitants within that city. Massachusetts also has an elaborate classification of licenses, differentiating sharply between the privileges the various classes of licensees may enjoy. The highest premium is placed on the license to hotel-keepers to sell all liquors by the drink, with the privilege of keeping their bars open an hour later than the saloons, for which an extra license fee is charged. The license to sell liquors by the drink is divorced from the right to sell by the bottle in the same place (the so-called "bar and bottle bill" which is still in its experimental stages). A separate license is required of those who engage in the bottle trade. For the right to sell malt liquors, cider and light wine a lower license fee is exacted. There are separate club licenses. The local excise boards (in Boston appointed by the governor) are given wide powers of discretion both in awarding and revoking selling privileges.

A usual concomitant of high license laws is the restriction of the hours of sale, its prohibition on Sundays and legal holidays, the confinement of saloons to prescribed areas or their removal from residential districts, and numerous other devices designed to prevent excesses and limit temptation.

Extent of High License.—In addition to the states mentioned, high license prevails in Minnesota, New Hampshire, Florida, West Virginia, Washington, Arkansas, Texas, Missouri, Michigan, Idaho, Illinois. As the license fees vary in these states so do the methods of licensing and the various restrictions placed upon the traffic.

Relation of High License to Number of Drinking Places.—High license uniformly tends to reduce the number of saloons. Where it is coupled with a statutory limitation of licenses, the reduction becomes almost automatic. In addition to Massachusetts, the following states limit licenses to population as follows: Iowa, 1 to 1000 inhabitants with no privilege of transferring licenses; Michigan, 1 to 500; Minnesota, 1 to 500; New York, 1 to 750 inhabitants, except in the case of hotels continuously occupied since 1896; and Rhode Island, 1 to 500 inhabitants. There are also states in which the local community through its city ordinances, police or excise board or city charter may limit the number of saloons, but this is exceptional.

Effects of High License.—The chief advantages of high license are that it: (1) reduces the places where liquor may be sold; (2) facilitates supervision and control; (3) increases the financial responsibility of the licensee, thereby serving to exclude the more objectionable type of liquor dealers; (4) generally puts a premium on decent conduct of the traffic. The character of the saloon trade is, however, much less determined by the amount of fees exacted under statutory prohibition than by the auspices under which licenses are issued. Where these are issued by men unhampered by extraneous motives, and who have sufficient authority in law to safeguard the traffic and punish violations of the conditions of the license by suspension or revocation, the character of the traffic will self-evidently be far better than in states where licenses are parceled out by local politicians who have less interest in regulation than in conferring privileges on their friends. In other words, a high license system may prove an effective restraint in one state, while in another, with an equally high license fee, it will not be effective simply because of undesirable licensing authorities and consequent lax enforcement of the law. As a rule, low license has stood for a more or less unregulated condition of the saloon traffic, the absence of strict supervision and a paucity of sane regulative measures. This, however, is not invariably the case, and even a statutory limitation of licenses may be compatible with a low license system. Thus in Connecticut, for instance, where the license fees do not exceed $300, no original saloon license may be issued if its issuance increases the number of licenses beyond 1 to 500 inhabitants.

Decrease in Licenses.—Due to high license fees and the adoption of statutory limitation in several states, a very general decrease in the number of retail licenses issued has occurred in recent years. In 1907–1908 the number of retail licenses in cities of over 300,000 population decreased 4 per cent, in cities of 100,000 to 300,000, 2.9 per cent; in cities of 50,000 to 100,000, 4.6 per cent; and in cities of 30,000 to 50,000, 15.1 per cent. Since these figures were issued by the United States Bureau of the Census, a still further decrease has undoubtedly occurred due to the adoption by several states of statutes limiting the number of licenses.

Rates of Licenses.—The lowest license fee in the states is charged in Delaware, being only $100 per annum. From this amount, the fees in the different states run up to several thousand dollars for licenses of the first class. States prescribing the minimum amount of $1000 to $1200 for privileges of the highest class are: New Hampshire, Florida, Massachusetts, West Virginia. The states fixing the maximum at $1000 to $1200 are: New York Pennsylvania (cities of first and second class), Minnesota, Nebraska, Ohio and Washington. In several states the local licensing authorities may add a definite or indefinite amount to the license fee prescribed by statute.

Disposition of License Money.—There is a great variation in the amounts divided between the municipality, county and state. In many states, the municipalities receive the total revenue from the liquor traffic, as in California, Illinois, Nebraska, New Jersey, Oregon, Utah,

West Virginia and Wisconsin. In Connecticut, Florida, Louisiana, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New York, Ohio, Rhode Island, the state or county receives a certain percentage, varying from 2 to 50 per cent of the total receipts. In only one state, Delaware, all the receipts of the liquor traffic are paid to the state. There are no complete statistics of the whole amount of license fees and taxes. It is known, however, that in 1908 the total amount received by cities of over 30,000 from the liquor traffic and licenses was $40,472,310. From 1902 until 1908, the receipts of cities from this source have steadily increased.

The number of inhabitants to each place of liquor traffic differs tremendously. Thus, for instance, in 1908, Hoboken, N. J., had 175 inhabitants to each such place, while Lincoln, Neb., had 2038. In the same year, the average number of inhabitants to each saloon, hotel, restaurant and club in cities of over 30,000 inhabitants was 353.

Wholesale Establishments.—Wholesale establishments, distilleries, breweries, and bottling establishments are everywhere subject to a license or tax. The fee paid by wholesale establishments ranges from $60 to $2000 per annum in different places. Distillery licenses run from about $250 to $1000. Breweries usually pay according to the amount of output which may mean an annual fee of $5000. Licensing fees for bottling establishments range anywhere from $80 to $1500.

See DRUNKENNESS, REGULATION OF; GOTHENBURG SYSTEM; LOCAL OPTION; TAXATION, SUBJECTS OF; and under LIQUOR.

References: J. G. Capers, *Federal Laws Governing Licensed Dealers* (1910); R. A. B. Hausman, *Liquor Laws of Penn.* (1907); Peter Bachus, *Laws of N. J. Relating to the Regulation and Traffic in Intoxicating Liquors* (1910); U. S. Bureau of the Census, *Statistics of Cities having a Population of over 30,000* (1908). JOHN KOREN.

LIQUOR, STATE DISPENSARY OF. The only American experiment in liquor legislation having as a purpose to eliminate private profits from the sale of intoxicants is the so-called dispensary system. It originated in Athens, Georgia, and was adopted by the state of South Carolina in 1903. Under this system all liquors were purchased by a state board of control for distribution among the county boards of control in charge of the local dispensaries. Liquor by retail could only be sold in sealed packages of not less than one-half pint for consumption off the dispensary premises. The dispensaries were closed between sunset and sunrise. Each purchaser was obliged to sign a blank, giving his name, age, residence, kind and quantity called for. All liquors bought by the state were required to be chemically tested by the state analyst.

The South Carolina state dispensary survived until 1907, when it was displaced by an optional county dispensary system. The original act was twice reënacted bodily, in 1896 and 1897, and subjected to much litigation both in state and federal courts. The lack of success of state control of liquor selling was largely due to bad management superinduced by political influences. The dispensary law remained a bone of political contention throughout its life, and the offices created under the system were parceled out as a reward for political services. The turbulent conditions of South Carolina politics made enforcement of the law exceedingly difficult; yet for a time the system achieved a distinct success which was reflected, among other things, in the very marked falling off in arrests for drunkenness in the urban communities. As a source of revenue the dispensary system surpassed expectations. It was exceedingly profitable both to the states and the counties, but this proved one of the causes of its downfall.

The constitutional convention of South Carolina, in 1905, framed an article on intoxicating liquors leaving it optional with the legislature to continue the dispensary system, or to pass a prohibitory law, or to grant licenses for the sale of liquor in packages, not to be consumed on the premises. Taking advantage of this provision, the legislature in 1909 adopted a prohibition measure with the privilege of a referendum in counties having dispensaries. Of these counties (22 in all), sixteen voted to abolish the dispensary system and six to retain it. Twenty were already "dry" under local option elections. A new amendment of the constitution would be required in order to permit South Carolina to return to an ordinary saloon system; but the last elections foreshadowed a possible change in the prohibitory act whereby "a majority of the white citizens of any county" may be permitted to adopt a restricted license system. In the states of Alabama, Georgia, and North Carolina, the dispensary system was in operation locally until wiped out of existence by the passage of prohibition laws.

See MONOPOLIES; PROHIBITION; and under LIQUOR.

References: E. R. L. Gould, *Gothenburg System of Liquor Traffic* (1893), *Popular Control of the Liquor Traffic* (1895); Massachusetts Commissioners, *Report on the Norwegian System*, 1894; J. Rowntree and A. Sherwell, *Public Control of the Liquor Traffic* (1903), *Temperance Problem and Social Reform* (1900), ch. viii. JOHN KOREN.

LITTLE GIANT. A popular sobriquet of Stephen A. Douglas (*see*) bestowed upon him at the time of his first political speech in Illinois, in 1834, by his ardent admirers. It gained universal acceptance as a recognition of his force and energy. O. C. H.

LITTLE MAC. A nickname given to General George B. McClellan by his soldiers. It became politically conspicuous during the campaign of 1864, when McClellan was the Democratic presidential candidate. See DEMOCRATIC PARTY.
O. C. H.

LITTLE MAGICIAN. A nickname of Martin Van Buren (*see*) bestowed because of the adroitness he displayed in political management. O. C. H.

LITTLE PHIL. A nickname given to General Philip H. Sheridan by the soldiers under his command in the Civil War, as an expression of their affection for him. O. C. H.

LIVE STOCK LEGISLATION AND ADMINISTRATION. Important among the federal laws dealing with live stock are: (1) act of May 29, 1884, establishing the Bureau of Animal Industry; (2) act of March 3, 1905, providing for quarantine districts where communicable diseases exist among animals; (3) act of June 29, 1906 (twenty-eight hour law), providing that animals in interstate transit shall not be confined for a period longer than twenty-eight consecutive hours without being unloaded for rest, feed and water; (4) meat inspection amendment of June 30, 1906, providing for inspection before slaughtering of all animals the meat of which is intended for interstate or foreign commerce. Many states have enacted similar laws. The administration of such laws is intrusted largely to the Department of Agriculture in which: (1) the board of animal industry supervises the inspection of animals connected with interstate, import or export business, coöperates with the forest service and state governments in the eradication of communicable diseases, and investigates breeding and feeding of live stock; (2) the solicitor (since 1905) assists in the prosecution of persons violating the above laws. See AGRICULTURE, RELATIONS OF GOVERNMENT TO; HEALTH, PUBLIC, REGULATION OF. References: U. S. Secy. of Agriculture, *Annual Reports;* Department of Agriculture, *Year Book* (1911 to date). O. C. H.

LIVINGSTON, EDWARD. Edward Livingston (1764–1836) was born at Clermont, N. Y., May 26, 1764. He was admitted to the bar in 1785, and soon rose to leadership. From 1795 to 1801 he was a Republican Representative in Congress; and it was he who introduced the resolution calling upon Washington for a copy of Jay's instructions in regard to the treaty of 1794. From 1801 to 1803 he was United States district attorney for the district of New York, and at the same time mayor of New York City. The dishonesty of an agent brought him heavily into debt to the United States; and in 1803 he resigned his offices, turned over his property to satisfy the judgment which he had confessed, and removed to New Orleans. There he mastered the intricate law of the province, and drew up a code of procedure which was adopted in 1805. He was a member of the Louisiana house in 1820, and from 1822 to 1829 was a Representative in Congress. He prepared for Louisiana both civil and criminal codes, the latter of which, though not formally adopted, powerfully influenced criminal procedure in America and Europe. His debt to the United States was paid in 1826. From 1829 to 1831 he was United States Senator from Louisiana, Secretary of State 1831–33 (writing, it is believed, most of Jackson's proclamation to South Carolina), and, from 1833 to 1835, minister to France. He died at Rhinebeck, N. Y., May 23, 1836. References: C. H. Hunt, *Life of Edward Livingston* (1864); DeA. S. Alexander, *Pol. Hist. of the State of N. Y.* (1906), I. W. MACD.

LIVINGSTON, ROBERT R. Robert R. Livingston (1746–1813) was born at New York City, November 27, 1746. In 1773 he was admitted to the bar, and for a short time practiced in partnership with John Jay. From 1773 to 1775 he was recorder of New York City, and in 1775 was elected to the assembly. In the same year he was chosen a delegate to the Continental Congress, where he was a member of the committee which drafted the Declaration of Independence. He was also a member of the New York constitutional convention of 1777, and of the ratifying convention. He was then appointed chancellor, an office which he retained until 1801. From 1779 to 1781 he was again a member of Congress, and from 1781 to 1783 secretary of foreign affairs under the Confederation. In 1788 he presided over the New York convention which ratified the Federal Constitution, and in the same year was appointed minister to France, in which position he was the principal negotiator of the Louisiana purchase. He resigned in 1805, and on his return to the United States interested himself in Fulton's plans for steamboat navigation; in this connection obtaining from the legislature, for himself and Fulton, exclusive privileges for steamboat navigation in New York waters, afterwards set aside by the Supreme Court in Gibbons *vs.* Ogden (9 *Wheaton* 1). He died at Clermont, N. Y., February 26, 1813. See CONTINENTAL CONGRESS; NEW YORK. References: E. B. Livingston, *The Livingstons of Livingston Manor* (1910); DeA. S. Alexander, *Pol. Hist. of the State of N. Y.* (1906), I. W. MACD.

LIVING WAGE. A living wage is one which enables a workman to maintain his efficiency, to support his family at his standard of living, and to lay by a sum sufficient to live without labor in old age. See COST OF LIVING; FAIR WAGE; LABOR, PROTECTION TO; WAGES, REGULATION OF. Reference: S. Nearing, *Social Adjustment* (1911), 80–82. J. R. C.

LOAN ASSOCIATION vs. TOPEKA. In an action brought in a federal court to enforce the payment of bonds issued by the city of Topeka, by way of donation to a manufacturing enterprise under authority of a state statute authorizing cities to encourage the establishment of manufactories in such cities by appropriations to such enterprises of money from the general funds or by issuance of bonds as the city council might determine, it was contended for the city, by way of defense, that it was beyond the power of the legislature to take the property of its citizens under the guise of taxation to aid enterprises not of a public character, and that, in general, to levy taxes not having a public purpose was beyond the scope of the power of taxation. On appeal the Supreme Court of the United States, in 1874 (20 *Wall.* 655) sustained the lower court in holding that the bonds were void and unenforceable. It is conceded that the legislative discretion is unlimited as to the manner or extent of the exercise of the taxing power (subject, of course, to general constitutional limitations); but it is held that to authorize the exaction of a contribution in aid of purposes essentially private is not within the taxing power or any other legitimate power of the legislative department of government under our constitutional system, and is practically equivalent to the taking of the property of one person in order to give it to another. A distinction is drawn between public purposes which may result incidentally in private benefit, such as the construction of railroads by private corporations under legislative authority, and private purposes which may result incidentally in some advantage to the people of the locality in which the private enterprise is to be carried on. **See** PUBLIC USE; TAXATION. **Reference:** T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 704, 705. E. McC.

LOANS AND CURRENCY, DIVISION OF. The Division of Loans and Currency is one of the divisions of the United States Treasury Department (*see*). This division exercises a certain supervision over the issue of bonds and matters affecting the currency (*see*). **References:** Secretary of the Treasury, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 123–129. A. N. H.

LOBBY. Definition.—The lobby is named from the passages surrounding or adjacent to the halls of legislation. In general the lobby includes all persons who frequent legislative halls for the purpose of influencing legislation. More specifically it denotes a distinct class of adjunct lawmakers, sometimes called "the third chamber," under the pay of persons, societies or corporations interested—the body of professional lobbyists. This use of the word, though not the fact designated by it, is almost wholly confined to American politics.

Reasons for Lobbying.—Lobbying is carried on from a variety of motives. In some of its phases it implies no discredit, but is highly commendable. Good citizens become interested in measures of reform. They agitate the matter, seeking to win favor for their cause in many and various ways, since men are open to a great diversity of influences. They reach some in private conversation; they hold public meetings, argue their question, pass resolutions, write to members of Congress, appoint committees to visit the legislature—all without a suggestion of appeal to ignoble motives. Action of this kind proved effective in respect to the bill for an international copyright. For many years the public conscience was scandalized by the piracy of literary property belonging to foreign authors by unprincipled publishers. At last a strong lobby was organized against it and Congress was induced by the outside pressure brought to bear to enact laws removing the occasion for scandal. Educators secure reforms by visiting the legislature and exerting personal influence upon the members. Temperance societies have salaried officers, one of whose duties is to "lobby" for the desired reforms. The advocates of child labor reforms prepare bills and watch their passage through the legisature. Such lobbying is increasing. All classes of good citizens are urged to watch their lawmakers; to take account of their votes; to encourage their own representatives to support measures for the good of the state. A closer relation is being established between the legislature and universities, colleges and all schools. In Wisconsin an official organic connection has been established between the legislature and the state university, and the legislative reference department (*see* LEGISLATIVE REFERENCE BUREAU) fulfills on behalf of the public many of the duties formerly performed by the "third chamber" on behalf of the corporations. The citizens of California, having for a generation suffered many things at the hands of corporation lobbies, have organized a "people's lobby" whose business it is to attend the sessions of the assembly and observe the conduct of the lawmakers in the interest of the public. So prominent and influential have become the lobbies for reform that in many cases the corruptors of legislatures have been driven to surrender or resort to more secret methods (*see* PUBLIC OPINION AND POPULAR CONTROL).

The lobby, however, originated in America not for the promotion of reforms but on behalf of the ownership of property. It is law that gives value to property. A slight change in a law may have tremendous effect upon the value of certain classes of property. Changes in the tariff duties, in banking laws, in the currency laws, in pension laws, in mail contracts, in railway laws, in land laws, may vastly enhance or diminish the worth of a man's or a company's property, may add to or take from the income of great numbers of the people.

Men whose financial interests are liable to be affected by legislation will inevitably seek to influence the lawmakers. They employ attorneys to argue their cases before committees. They gather statistics and present facts in their favor. They draft bills and secure their introduction. They may at the same time appeal to the public for support. These methods of procedure are not different from those of the reformers' lobby. Thus citizens have a right to strive to influence legislation in the interest of property. So long as the appeal is open and public, and is addressed to the reason of the lawmaker, it is legitimate. But it has come to pass that a very large part of the lobbying in the interest of property is of an entirely different character. Professional lobbyists are employed who are masters of every form of secret influence upon human weakness and skilled in the manufacture of an ignorant public sentiment to support their ends. They know a thousand ways of gaining votes or winning approval besides the payment of cash. But the corrupt lobbyist will pay the money if he must, though in general he attains his results through more refined forms of corruption. In 1913, public attention was focused on this form of lobbying in connection with the revision of the tariff by some very plain speaking on the part of the President.

Restriction of Lobbying.—Since legitimate lobbying for the good of the state or in the interest of property is so closely related in appearance to corrupt lobbying for robbery of the public, efforts to correct the abuse by legal process meet with many obstacles. Courts have upheld the right of citizens and corporations to employ attorneys to gather statistics, draft bills and argue their cases before legislatures and committees. Yet a contract to pay for personal solicitation in support of a measure is held illegal as being contrary to public policy. The secretary of the Temperance Alliance under contract as a promoter of temperance legislation probably could not enforce his contract unless there was statutory recognition of such an agency. Massachusetts requires all employed lobbyists to be registered. A registered agent could probably enforce his contract. A Wisconsin law discriminates between those who lobby in the interest of property and financial gain and others, and places a number of restrictions upon the former class. Legislation forbidding all lobbying or personal solicitation of members of the legislature seems to have the effect of deterring good citizens from the performance of their duty, and of leaving a clear field for the corruptors of the legislature. The work of the latter is not confined to the lobby. Indeed, the surrounding of legislative halls with professional lobbyists of both sexes is now condemned by the more skillful as crude and ineffective. By definition the lobby is outside of the legislature. It is an added chamber, and as such is exposed to public gaze. The later and more successful method is to use the party machine itself, to make the would-be lobbyist a member of the legislature and organize the "Third Chamber" within the legislature. Trained supporters of the party boss may then hold the balance of power within the lawmaking body. In such a legislature a wink or a nod or some sign which entirely escapes public notice may direct official action.

See Bribery in Legislative Bodies; Congress; Corruption, Legislative; Influence in Government; Legislature and Legislative Reform; State Legislature.

References: M. A. Schafner, "Lobbying" in Wisconsin Library Commission, *Comparative Legislation Bulletin*, No. 2 (1906); P. S. *Reinsch, Am. Legislatures and Legislative Methods* (1907), chs. viii, ix; M. Ostrogorski, *Democracy and Political Parties* (1902), II, 182–196; C. A. Beard, *Readings in Am. Government and Politics* (1911), 482–484.

Jesse Macy.

LOCAL BOARDS. See Appointments to Office; Commissions in American Government; County Commissioners; County Government; Educational Administration; Executive and Executive Reform in the American System; Public Works, National, State and Municipal; Police Commissions and Commissioners.

LOCAL GOVERNMENT AND THE STATES.

Local government in the United States is regulated by each of the several states and territories, subject to practically no control by the National Government. The latter is represented throughout the county by local officials, such as revenue collectors and postmasters; but these are distinctly agents for the administration of national affairs, and are considered as exercising no powers of local government.

Legislative Authority.—As between the states and the local authorities there is a sharp contrast between legal theory and the practical administration of public affairs. As a matter of legal power, each state has almost complete authority to establish, modify and abolish local governments and determine their powers. Under most of the state constitutions, the state legislatures are limited by some constitutional provisions; but in the main, the legislatures have authority to determine the powers and functions of local officers. At the same time, the laws relating to local govern-

ment provide for the election of local officials, who are charged not only with the administration of distinctly local affairs, but also with the execution of state laws of the most general character.

This régime of legislative centralization and administrative decentralization developed from the colonial period; and reached its maximum about the middle of the nineteenth century. Since then, there have been some counter tendencies. The power of the legislatures has been limited to some extent; while in some branches of public administration, state officials have been established with powers of supervision over local authorities; and in some fields a considerable amount of direct state administration has been introduced.

Legislative Centralization.—In spite of these recent tendencies, the underlying legal principles consider local authorities as primarily agents of the state, with only such powers as have been specifically granted. Thus, it has been held by the Supreme Court of Ohio that:

> A county organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration (Hamilton Co. *vs.* Mighels, 7 *Ohio State* 109, 119).

To the same purport, Justice Gray (a New England man), in an opinion of the Supreme Court of the United States, asserted that:

> Towns in Connecticut as in the other New England States, are territorial corporations, into which the state is divided by the legislature, from time to time, at its discretion, for political purposes and the convenient administration of government; they have those powers only which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs (Bloomfield *vs.* Charter Oak Bank, 121 *U. S.* 129).

State Functions Performed by Localities.—The legal supremacy of the state finds its formal expression in the detailed statutory legislation providing for the machinery of local government and regulating minutely the powers and duties of the local officials. Much of the work of these officials has to do with the execution and enforcement of general state laws for the administration of justice, the preservation of public safety and health, the provision of public roads, the relief of the poor and the assessment and collection of taxes. Moreover the state legislation makes no clear distinction between the state and the local functions of local officials; although such a distinction is recognized somewhat vaguely, in judicial decisions in cases regarding property rights and the liability of local corporations for damages due to negligence. Still further, by means of special acts for particular communities, the power of the legislature has been frequently exercised so as to regulate the minor details of strictly local affairs.

Limitations on Legislative Control.—The evils of special legislation and legislative control of local affairs have led many of the states to adopt constitutional provisions intended to limit the power of the legislature. As early as 1851 the constitution of Ohio prohibited special legislation on a number of subjects; and in most of the states, special legislation on local government is prohibited or restricted. Many state constitutions provide for the local election of county officers; and a number limit the power of the legislature to create counties or change county seats. In several states franchises in the public streets may not be granted without the consent of the local authorities; and in a few taxes for local purposes can only be levied by corporate authorities. In half a dozen states—Missouri, California, Washington, Minnesota, Michigan and Ohio—the constitutions give cities the power to frame, adopt and amend their own charters.

These constitutional provisions have served in some degree to limit legislative control of local government, especially in the more strictly local affairs. But they do not take away the power of the legislature to enact general laws, regulating the functions of local authorities.

State Supervision.—Along with legislative centralization, the active administration of both general state laws and local functions has been decentralized to an excessive degree. Locally elected county, town and city officials have been entrusted with the execution of the most important general laws, as well as the management of affairs of local interest; and these local officials have been subject to no administrative supervision and are still for the most part free from any effective state control.

Under the régime of almost complete administrative decentralization, the chief means for exercising supervision over local officials was, as it had been in England, through the judicial courts. Here, by means of ordinary civil and criminal suits, or by special remedies, such as writs of injunction, *mandamus*, *certiorari*, *habeas corpus* and *quo warranto*, local officials could be compelled to carry out the express provisions of the statutes or could be penalized for their defaults. In England, with a centralized judicial system, this method of state supervision was, perhaps, moderately successful at a time when the whole scope of local administration was limited. But in the United States, where the judicial administration has also been decentralized, and especially since the expansion of public functions, the judicial control has proven clearly inadequate.

Mainly since 1850, there has been established a small degree of supervision of local authorities by state officials in the fields of education, charities, public health and finances. Half a dozen states had state school officials by 1840; and by 1860, such officers had been provided in all the northern and two of the southern states. The first state board of charities was organized by Massachusetts in 1863, and the first state

board of health by the same state in 1860; and such boards are now formed in most of the states. Nearly all the states now have state boards of equalization; about twenty states have state tax commissioners (established since 1890) with more effective powers over the assessment of property for taxation; and in Ohio and several other states there is now a state audit of local accounts. In these and other lines, there has also been developed a considerable amount of direct state administration, such as state educational, charitable and correctional institutions, state factory, mine and food inspectors, state banking and insurance officials and state railroad and public service commissioners. Pennsylvania has established a force of state police (*see* CONSTABULARY).

These tendencies towards a more centralized administration are significant changes from the earlier régime. But the development has been much less than in England during the past 100 years, or than that in the countries of continental Europe. There is need for correlating the movements for the limitation of legislative control over local affairs and for the development of state administrative supervision into a more coherent policy.

See CENTRALIZATION; COUNTY GOVERNMENT; DISTRICTS, RURAL ADMINISTRATIVE; LOCAL SELF-GOVERNMENT; POPULAR GOVERNMENT; TOWNS AND TOWNSHIPS.

References: F. J. Goodnow, *Administrative Law of the U. S.* (1905), 162–178; J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), IV. JOHN A. FAIRLIE.

LOCAL GOVERNMENT IN ENGLAND. The areas of local government in England and Wales are: (1) the administrative county; (2) the borough; (3) the urban district; (4) the rural district; (5) the parish. In addition, the poor law union, which is a group of parishes, exists as the unit of public poor-relief administration.

County.—There are 62 administrative counties, conforming in boundaries for the most part to the historical shires. Each county has an elective county council which has direct charge of many general matters, and exercises a certain amount of supervision over the work of subsidiary authorities within the county (*see* COUNTY COUNCIL IN GREAT BRITAIN).

Borough.—There are two kinds of boroughs, the county borough and the municipal borough. Both are alike in that they owe their legal existence to a borough charter granted by the crown under the provisions of the Municipal Corporations Act of 1882 (45 and 46 Victoria, c. 50). They differ in that a county borough is not in any way subject to the jurisdiction of the county council and is not represented in this body. There are about 350 boroughs in England and Wales, and of these about one-fifth—mainly places of more than 50,000 population—are county boroughs. The governing body of the borough, whether county or municipal, is the borough council, which consists of a mayor, aldermen, and councillors sitting together. The councillors are elected, either at large or by wards, for a three-year term, and one-third retire annually. The councillors elect for a six-year term a number of aldermen equal to one-third of the number of councillors. The councillors and aldermen together elect a mayor for a single year. The borough council has extensive powers in such matters as appointing town officers, the supervision of police and fire protection, sanitation, highways, education, and other municipal departments as well as in the provision of public utilities (*see* BOROUGH COUNCIL IN ENGLAND).

The term "city" is applied only to a small number of boroughs, some large and some small, some ancient and some modern, which are or have been the seats of bishops or archbishops—*e. g.*, York, Westminster, and Oxford—or which have been granted the title by royal patent—*e. g.*, Leeds and Sheffield.

Urban District.—This differs from the borough mainly in that it does not possess a charter. It may be more extensive in area and more populous than a borough. Its governing body is an elective council which contains no aldermen and elects no mayor. This council has powers somewhat less extensive than that of the borough (*see* URBAN DISTRICT COUNCIL).

Rural District.—The rural district is a group of parishes joined together chiefly for common effort in road and sanitary administration. Its affairs are in charge of an elective council which is under the general supervision of the county authorities (*see* RURAL DISTRICT COUNCIL).

Parish.—There are two types of parish, the urban and the rural. Of both types there are in England and Wales about 15,000. Every parish, whether urban or rural, has a board known as the vestry, an elective body with powers which are now confined almost exclusively to ecclesiastical affairs (*see* PARISH VESTRY). Rural parishes have in addition a parish council, the members of which are elected by the voters of the parish, and this body exercises various powers of a local character (*see* PARISH COUNCIL). The poor law union is a special area comprising a number of parishes. It is not necessarily identical in area with any of the foregoing administrative units, and exists only for the local administration of the national laws relating to public poor relief. Its local authority is an elective board of guardians (*see* POOR LAW GUARDIANS IN ENGLAND).

London.—The metropolis, London, forms an administrative county with a county council which has a special organization and powers (*see* LONDON COUNTY COUNCIL). Within the

county of London are twenty-eight municipal boroughs, each with its mayor, aldermen and councillors; and within each borough are a number of urban parishes each with its own vestry.

See Borough Council in England; Parish Council; Parish Vestry; Rural District Council.

References: S. and B. Webb, *English Local Government* (1904–1908); J. Redlich and F. W. Hirst, *Local Government in England* (1903); W. B. Odgers, *English Local Government* (1901); P. W. L. Ashley, *Local and Central Government* (1906); W. B. Munro, *Government of European Cities* (1909), ch. iii; *Local Government Manual* (published annually). William Bennett Munro.

LOCAL OPTION AND LIQUOR SELLING.

Principle.—Although the principle of local option is by no means new, it has won general recognition only within a quarter of a century, and the most notable activity in securing local prohibition by popular vote and enforcing it has occurred within the last decade. Massachusetts was probably the first state to give the local option principle recognition in its liquor laws (1868), but did not permanently commit itself to it until 1881.

In Massachusetts, as well as in other states, local option was at the outset regarded as adapted only to the needs of rural communities, small towns, and suburban municipalities adjacent to some larger territory under license. The privilege was exercised accordingly. Within recent years, however, strenuous effort has been made to bring large centers of population under prohibition by means of larger units in local option elections, chiefly counties.

Application.—The methods of applying local option vary greatly and determine more or less the extent of the territory brought under their operation. In general it may be secured in two ways: (1) by direct popular vote applicable to all localities; (2) by direct popular vote applicable to special localities or rural districts only. There are, in addition, two indirect methods of securing local prohibition: (1) through discretionary powers vested in city councils and other popularly elected bodies (county boards, selectmen, etc.); (2) through the right to veto by remonstrance and by enactments requiring the consent of legal voters, freeholders, abutters, etc.

The following states are without direct or indirect local option laws: Nevada, New Jersey, New Mexico, Pennsylvania, Utah (saloons may be closed by local decree of city councils and county boards), West Virginia, Wyoming. In the remaining states, the units in local option elections (those marked with a star exercise an indirect veto only) are:

Counties: Delaware, Florida, Michigan, Maryland, Montana, Iowa, Idaho, Ohio, Arkansas, South Carolina (counties with dispensaries).

Counties or sub-divisions of Counties: Arizona, *California, Delaware, Kentucky, Oregon, Louisiana, Indiana, Missouri, Texas, Virginia, Washington.

Townships: Connecticut, Rhode Island, Vermont, New York (rural).

Municipalities and Townships or Towns: Massachusetts, New Hampshire, Minnesota, *Nebraska, Wisconsin.

Municipalities and Precincts: Colorado (wards and precincts), South Dakota.

Townships, Municipalities and Precincts: Illinois.

Extent of Dry Territory.—Statements in regard to the area in square miles of the territory made "dry" through local option, the proportion of the total population living in the same, the number of "dry" and "wet" counties, are utterly deceptive as a measure of what local option accomplishes. Aside from the primary question of the extent to which local prohibition is enforced, the readiness of people to vote their own locality "dry" depends, frequently, upon the opportunity to purchase liquor in adjacent territory under license. The privilege of local option is, however, exercised over a very large portion of the United States, but chiefly in rural or semi-rural communities. That it has demonstrated its usefulness is universally conceded. The degree of completeness with which local prohibition is enforced varies greatly and depends generally upon the character of the locality affected and its geographic relation to territory under license. By means of local option large rural areas and many small towns have permanently excluded the liquor traffic.

One result of local option is the growing recognition of the saloon question as purely a city problem. The value of local option as applied to larger urban communities has not been established, except in suburban cities that find a safety valve in some nearby place under license. In many cities, the policy on the license question changes too frequently to permit a fair test. Local option is one of the most cherished principles developed in American liquor legislation; but its rightful exercise is more or less hampered by imperfect laws.

See under Liquor.

References: A. F. Acton, *Local Option in Massachusetts* (1911); U. S. Brewers' Association, *Yearbook*, 1910. John Koren.

LOCAL OPTION IN LOCAL GOVERNMENT.

A phrase applying to the legislative power delegated by the state through either constitutional provisions or legislative enactments to localities to make their own decisions on such subjects as are assigned. Since local governments are considered, in American law, as creatures of the state, all their powers are derived from the state. Important among the topics thus assigned are: issue of bonds for local purposes; the right to prescribe their own method of taxation (as applied to Oregon counties, 1911); choice between forms of local government; alteration of local boundaries;

the right in some states to make and amend municipal charters; choice of methods of voting (for instance the adoption of the voting machine by counties in Indiana); the manufacture and sale of intoxicating liquors. It is with reference to the last topic that the term is most commonly used. A majority of the states have some form of liquor option. The details vary widely among the several states. The more usual are county, township, precinct, city, ward and residence district options. See COUNTY GOVERNMENT; COUNTY PRECINCT SYSTEM; TOWN-COUNTY SYSTEM; TOWNS AND TOWNSHIPS. References: J. A. Fairlie, *Local Government* (1906); Anti-Saloon League, *Year Book; Am. Year Book, 1910*, 408–410, *ibid 1911*, 338–342, *ibid, 1912*, 394–397. O. C. H.

LOCAL OPTION SYSTEM. In several American states the organization of township government is optional with each county. This option system was first authorized in Illinois in 1822. At first local government in this state was organized under the county system, but with the settlement of the northern part of the state, there arose a demand for the establishment of townships; and this was provided for by the constitution of 1848. All but 17 of the 102 counties in Illinois have organized townships.

Later, the optional system was authorized in Missouri, Nebraska, and North and South Dakota. In Missouri the constitution of 1875 authorized township government, at the option of each county; and 33 counties have adopted the township system; and it is now in force in 20 counties. These are located in the northern and western parts of the state, near Iowa and Kansas. In Nebraska the constitution of 1875 authorized the organization of townships by county option; but not until 1883 was a legislative act passed to carry out the constitutional provision. About a fourth of the counties in the eastern part of the state have established township government; but some of the most populous counties, settled largely from New England and the middle states, have failed to establish township government. In the Dakotas, townships in some counties are organized only for school purposes. A law authorizing counties to establish townships was also passed by the state of Washington in 1895.

See COUNTY GOVERNMENT; COUNTY PRECINCT SYSTEM; TOWN-COUNTY SYSTEM.

References: G. E. Howard, *Local Constitutional Hist.* (1889), 144–147, 151, 152; Albert Shaw, *Local Government in Illinois* (1883).

JOHN A. FAIRLIE.

LOCAL SELF-GOVERNMENT. The term "local self-government" has different meanings in different political systems—meanings which have resulted from the historical development of the systems in connection with which the term is used. Like most terms of administrative law, local self-government has one meaning in England and the United States on the one hand, and another meaning in continental Europe on the other hand.

Anglo-American Conception.—English, and to a large extent American, local self-government is conceived of as meaning only the power of each local district recognized by the law to select the officers who have jurisdiction within the district. Anglo-American local self-government does not ordinarily include the power in the people of the local district to determine its sphere of competence as a governmental corporation, nor does it distinguish, so far as concerns the right of selecting what are called "local officers," between officers whose duties are of general concern and those whose duties are of local concern. The right of local self-government is regarded as recognized when all officers having local jurisdiction are selected by the people of the district, although the only powers of those officers are to execute laws in the framing of which the people of the district have participated only in so far as they acted as voters of the state as a whole. Furthermore local self-government is supposed to exist although the powers of the localities are all enumerated in great detail in the laws of the state, are narrow in extent and strictly construed, provided, however, that the right of electing local officers is granted. Local self-government in the Anglo-American sense is based on the two ideas of a great legislative centralization and a great administrative decentralization of the state. The Anglo-American conception of local self-government is due to the early development in England of a supreme and sovereign legislative body, viz., Parliament, and to the inability of the Crown, partly because of Parliament, to centralize in large measure the administrative system.

Continental European Conception.—The continental conception of local self-government which lays greater stress upon the power of local districts to determine their competence and fix the sphere of their activities than it does upon the uncontrolled right to elect the officers having jurisdiction within such districts, is due to the absence until comparatively recent times, of any central legislative authority apart from the Crown in any of the continental states. In France, for example, a national legislature developed only after the Revolution. In Prussia we do not find it until after the troubles of 1848.

Comparisons.—For these reasons we find the most vigorous local corporations, *i. e.*, the cities, possessed of wider powers of determining local policy on the continent than in either England or the United States. On the continent, for example, the general theory of the law is that cities have the power to act where they have not been directly or indirectly forbidden to act. In England and particularly in the United States, on the other hand, the

legal presumption is that cities may not act unless they have been directly or indirectly authorized by the law so to do.

In England and the United States the enumeration of the powers of local communities by the central legislature had the effect of vesting in that body a control over local action which was exercised through the passage of special legislation. This control was so effective that it was believed to be unnecessary, in the interest of the state as a whole, to develop any other method of central control. While the central control over local communities was thus, in England and the United States, originally a legislative control, on the continent the central control was administrative rather than legislative in character. For example, the Anglo-American law of municipal corporations hardly recognizes in a local corporation a right to borrow money. If it is desired by any city to borrow money, application has to be made to the legislature which grants the power by a special act. On the continent, however, the power of cities to borrow money has for a long time been recognized, but its exercise has been dependent upon the consent of some state administrative authority.

Recent Developments.—While originally the Anglo-American and the Continental law presented opposed conceptions of local self-government, the development of the last half century has had the result of causing these conceptions to resemble each other more than they once did. The Anglo-American law has recognized greater powers of control over local administrative acts in state administrative officers, while the very general adoption of general municipal corporation laws and the very general prohibition of special legislation with regard to local corporations, which has been characteristic of the later American state constitutions, have enlarged the sphere of action recognized by the law as belonging to local corporations. On the other hand the recent administrative legislation of the continent has considerably curtailed the powers of supervision over local corporations formerly possessed by state administrative officers. At the same time it still may truthfully be said that the continental conception of local self-government is characterized by legislative freedom and administrative dependence while Anglo-American local self-government is based upon a legislative centralization and an administrative decentralization of the state government.

See COUNTY GOVERNMENT; LOCAL GOVERNMENT IN ENGLAND; TOWNS AND TOWNSHIPS; and under MUNICIPAL GOVERNMENT.

References: J. Bryce, *Am. Commonwealth*, (4th ed., 1910), I, chs. xvii-l; J. A. Fairlie, *Local Government ni Counties, Towns and Villages* (1906); B. E. Howard, *Local Constitutional Hist. of U. S.* (1889); F. Lieber, *Civil Liberty and Self-Government* (F. D. Woolsey, Ed., 1891). FRANK J. GOODNOW.

LOCKE, JOHN. See POLITICAL THEORIES OF ENGLISH PUBLICISTS; SOCIAL COMPACT THEORY.

LOCKOUTS. Lockouts are begun by the simultaneous dismissal of all of the workmen by one employer or a group of employers. Usually an attempt immediately is made to reopen the plant with new workmen. Such attempts the old workmen resist by the methods employed in a strike. Lockouts do not differ in principle from strikes, except in the manner in which they are begun. Less than one lockout occurs for every twenty strikes. See BLACKLISTING; BOYCOTTS; EMPLOYERS' ASSOCIATIONS; STRIKES. **Reference:** U. S. Commissioner of Labor, *21st Annual Report*, 1900. J. R. C.

LOCO-FOCOS. The popular name of the Equal Rights party (*see*), a faction of the early Democratic party in New York. The chief tenet of the party was at first opposition to monopoly, especially as represented by the United States bank (*see* BANK OF UNITED STATES, SECOND). The name had its origin in an incident which occurred at a meeting in Tammany Hall (*see*), New York City, on the evening of October 29, 1835. With a view to opposing the ticket which the Tammany leaders proposed to nominate, a large number of Equal Rights men went to the meeting only to find the hall in possession of their opponents. A struggle ensued, and the Tammany contingent withdrew, turning off the gas as they left. The Equal Rights men, however, had provided themselves with candles and "loco-foco" matches, with which illumination the meeting proceeded. Resolutions were adopted denouncing monopolies, opposing the bank, favoring hard money, approving the policy of Jackson, and endorsing the nominations of the Democratic convention at Baltimore. A state ticket was nominated, but was defeated in the election, although the nominee for Congress, Charles G. Ferris, received over 4,000 votes. Many of the Loco-Focos returned to their Democratic allegiance, but the radicals formed an independent organization, which, in 1836, nominated a city ticket. The ticket was defeated, but the vote for it divided the city council between Tammany and the Whigs. September 15 a state convention, attended by 93 delegates, met at Utica and nominated Isaac S. Smith for governor. Smith received 3,496 votes, of which about 1,400 were from New York City; but the Loco-Foco support was in part responsible for the election of three members of Congress. A state ticket was again nominated in 1837, after which the Loco-Focos were absorbed by the Democrats. See DEMOCRATIC PARTY. **References:** F. Byrdsall, *Hist. of the Loco-Foco or Equal Rights Party* (1842); J. A. Woodburn, *Political Parties and Party Problems* (1903), 138. W. MACD.

LODGE, HENRY CABOT. Henry Cabot Lodge (1850–) was born at Boston, May 12, 1850. From 1874 to 1876 he was assistant editor of the *North American Review*, and from 1875 to 1879 was lecturer on American colonial history at Harvard. In 1876 he was admitted to the bar. He entered politics in 1880 as a Republican member of the Massachusetts house of representatives, as a member of the state central committee of the party, and as a delegate to the national convention at Chicago. He was a delegate to each succeeding national convention, and chairman in 1900 and 1908. In 1887 he was elected to Congress, and held his seat in the House until 1893, when he was elected to the Senate, of which body he is still (1913) a member. In 1903 he was a member of the Alaskan boundary commission. His interest in history and literature, joined to his notable productivity as an author, earned him the title of "the scholar in politics," and made him, for a time, a champion of civil service reform and other progressive policies; but with increased prominence came also increased partisanship, and he must now be classed as a reactionary supporter of the political machine. His best known publications are his lives of Washington, Hamilton, and Webster (*American Statesmen Series*, rev. ed., 1898), and *Works of Hamilton* (9 vols., 1885). See REPUBLICAN PARTY. References: *Appleton's Annual Cyclopedia* (1888–1901); H. C. Lodge, *Speeches and Addresses, 1884–1909* (1909); F. B. Tracy, "Henry Cabot Lodge" in *New Engl. Mag.*, XXXIII, 1905, 299–306; F. W. Burrows, "Our Senior Senator," in *ibid*, XLII, 1910, 610–614.

W. MACD.

LODGING HOUSES, PUBLIC. The term lodging house has two well-accepted meanings. It is a hotel where no food is furnished, patronized by men, generally of the homeless or out-of-work class, who are harbored for a single night, or for a week or less, who sleep either in small separate rooms, or in long dormitories with many beds placed side by side, sometimes even one above the other. The charges for a night's lodging range from five cents to fifty cents. The lodging house is generally provided with one large public room, provided with chairs and tables; it is also equipped with washrooms and toilets.

Lodging houses are also houses where "lodgings" are let, *i. e.*, boarding houses without meals. Here lodge both men and women, but chiefly single persons who hire rooms by the week. Rooms are small and scantily furnished, and are cared for by the proprietor. Houses of this kind are rarely especially built for the purpose but are, as a rule, former private residences which have deteriorated.

Outside of New York City there has been little regulation of lodging houses. The New York law deals with fire escapes, light, ventilation, sanitary conveniences, water supply, etc., and provides for semi-annual inspection. In some cities, buildings of this kind are licensed by the board of health which prescribes detailed regulations dealing chiefly with ventilation, distance between beds, cleanliness and fumigation of bedding, medical inspection of inmates, reporting of contagious disease, etc. Buildings of this kind are in some states also subject to close control by boards of elections, who require complete lists of all guests registered during certain periods before election. Frequented by the degenerate and criminal classes, and also, unfortunately, by honest men out of work, lodging houses of the best type are well recognized recruiting grounds for criminals. They have been aptly termed "nurseries of crime," and "hot-beds of disease," potent factors in the spread of tuberculosis and other contagious diseases. They have been but slightly controlled heretofore, as they are valuable assets of the ward politician in the facilities they offer for colonization of voters. In a few cities "model" lodging houses have been built by philanthropic persons; these are best exemplified by the Mills Hotels of New York.

See BUILDING LAWS; HEALTH, PUBLIC, REGULATION OF; HOTELS AND LODGING HOUSES, REGULATION OF; MUNICIPAL HOUSING; TENEMENT HOUSE REGULATION.

Reference: *Greater New York Charter* (1906), ch. xix. LAWRENCE VEILLER.

LOEB, WILLIAM, JR. William Loeb (1866–) was born at Albany, N. Y., October 9, 1866. He became an expert stenographer, acting in this capacity to the New York assembly in 1888, to the state constitutional convention of 1894, and to the district attorney and grand jury of Albany county from 1895 to 1898; besides serving as secretary to various public officials. In 1899 he became stenographer and private secretary to Governor Roosevelt, continuing in the same capacity during the period of Mr. Roosevelt's vice-presidency. From 1901 to 1903 he was assistant secretary, and from 1903 to 1909 secretary, to President Roosevelt, acquiring in these positions a wide acquaintance and marked political influence. In 1909 he was appointed collector of customs at the port of New York, which office he held until 1913. His rigid enforcement of the customs laws and regulations, particularly in the matter of personal baggage, evoked wide-spread criticism; but he kept within the law and materially diminished smuggling, and also unearthed extensive frauds by importers. W. MACD.

LOG CABIN CAMPAIGN. See HARD CIDER CAMPAIGN.

LOG ROLLING. An expression borrowed from frontier life or the lumber camp and applied to legislative bargaining or compacts

for mutual aid by which legislators seek to turn public money into their own districts or secure special concessions for themselves or their localities—used extensively in the United States Congress in appropriation and tariff legislation. **Reference:** C. A. Beard, *Readings in Am. Government and Politics* (1911), 269.

O. C. H.

LONDON COMPANY. The London Company was organized in London, in 1606, by certain gentlemen, knights and merchants for the purpose of planting an English colony on the eastern coast of North America south of 41° north latitude. The company was under the control of a council established in England. Jamestown in Virginia was settled by the company, according to the requirements of the charter, in 1607. In 1609 and 1612 new charters were granted, establishing the company as a corporation. The colony was under the dominion of the company and there was a local council and a governor appointed by the corporation. The colony was almost despotically governed until 1619, when a representative assembly was called in Virginia. In 1624 the King annulled the charter of the company and its powers and interests reverted to the Crown. **See** COLONIAL CHARTERS; VIRGINIA, **References:** W. McDonald, *Select Charters and other Documents* (1899), 1–23; L. Tyler, *England in America* (1904), chs. iii–v. W. E. D.

LONDON COUNTY COUNCIL. Organization.—The London County Council is the chief local legislative and administrative authority for the administrative county of London. This administrative county was created by the London Government Act of 1888 (51–53 Victoria c. 41); it includes an area of about 118 square miles, and contains a population of about five millions. The London County Council is composed of 118 councillors and 19 aldermen. The councillors are elected two from each of fifty-seven election districts and four from the old "city" of London. They are chosen triennially by the voters of the county, the qualifications for voting being similar to those existing in other English municipalities. The aldermen are chosen by the councillors, either from their own number or from outside, and the term of an alderman is six years. Both councillors and aldermen sit together in the one council, however, and they have, in this body, the same powers and privileges. The only differences are in the method of selection and term of office. The presiding officer of the London County Council is a chairman, selected by the Council from its own membership or from outside. It also selects from its own ranks a vice-chairman and a deputy-chairman. These officers, as well as both aldermen and councillors, serve without stipend.

Elections.—Candidates for election to the Council are nominated by a nomination paper which must be signed by at least ten qualified voters; the elections are by secret ballot; and the ballots bear no party designations. The two local parties which figure most prominently in the County Council elections are called Progressives and Reformers. These have their own local programs and the elections are fought out upon county issues. During the greater part of the period since 1888 the Progressives have elected a majority of their candidates to the Council.

Powers Granted.—The powers of the London County Council are extensive. It has charge of main drainage and sewage disposal. It has supervision of the system of fire protection throughout the county. It provides for the construction and improvement of all streets that are metropolitan in character, and maintains the Thames embankment and all the Thames bridges except those located within the "city" limits. The Council administers the building laws including all laws relating to the construction of tenement houses. The Act of 1890, commonly known as the Housing of the Working Classes Act (53–54 Victoria c. 70) gave the Council power to clear congested portions of the territory under its jurisdiction and to provide for the erection and maintenance of workingmen's dwellings. The Council also has charge of the larger London parks and recreation grounds (except the royal parks). It has charge of the school system in the county and possesses special powers with respect to technical schools. Many minor functions have been also entrusted to it, as, for example, the licensing of places of amusement.

Powers Withheld.—The Council has no jurisdiction over the police of London: they are in charge of a commissioner whose authority extends over a metropolitan district which is much larger than the county. Water supply is in charge of the Metropolitan Water Board; lighting by gas is entrusted to private companies under the supervision of the Board of Trade, and lighting by electricity is in charge of the authorities of the twenty-eight boroughs which make up the county. These latter, likewise, have to do with such other matters as street-cleaning and subsidiary drainage. Poor-relief is in the hands of the Boards of Guardians chosen by the voters of the various poor law unions. The navigation of the Thames is regulated by a special board called the Thames Conservancy.

Efficiency.—For carrying on its work the Council has authority to levy local taxes or rates, and with the approval of Parliament or the Local Government Board may borrow money on the credit of the county. Since its establishment in 1888 the Council has constructed many important public works, notably the Blackwall Tunnel, the Tower Bridge Approaches, the Vauxhall Bridge, and the new King's Way. Most of its administrative work is carried on through standing committees, such

as the works committee, the education committee, the highways committee and various others, each of which includes from ten to thirty members.

See Borough Council in England; City and State; County Council in Great Britain; Legislation and Legislative Problems in Cities; Local Government in England; Urban District Council.

References: London County Council, *Annual Reports; Statistical Abstract for London* (annual); G. L. Gomme, *London County Council: its Duties and Powers* (1899); A. L. Lowell, *Government of England* (1908), II, ch. xliii; W. B. Munro, *Government of European Cities* (1908), 340–379; G. L. Fox, "The London County Council" in *Yale Review*, IV, May, 1895, 80. William Bennett Munro.

LONG AND SHORT HAUL. This term takes its origin from Section 4 of the Act to Regulate Commerce passed in 1887, which made it unlawful for any common carrier subject to the act to charge any greater compensation for a shorter than for a longer distance over the same line in the same direction, provided the circumstances of the shorter and longer services were substantially similar; and gave the Interstate Commerce Commission power to authorize a less charge for the longer distance and to prescribe the extent of departure from the regular rule.

It was the purpose of the section to prevent the place discriminations so extensively practiced at the time of the passage of the act. The Interstate Commerce Commission took the position that suspensions of the operation of the long and short haul clause were only to be made when competition at the long distance points was beyond the control of the railroads and the Commission, such, for example, as water competition or the competition of Canadian carriers.

However, in 1897, the Supreme Court of the United States in I. C. C. *vs.* Alabama Midland Railway Co., *et al.* (168 *U. S.* 144) decided that competitive railroads at terminal points created those dissimilar circumstances that warranted a suspension of the clause; and furthermore, that if circumstances were substantially dissimilar, the railroads were not in violation of the statute if they charged a less rate for a longer distance without permission of the Commission. This robbed the clause of all vitality.

It was amended in 1910, by eliminating the words "under substantially similar circumstances and conditions." The effect of this amendment is to forbid absolutely the charging of a less rate for a longer distance without the previous approval of the Commission.

See Discrimination in Railroad Rates; Interstate Commerce and Cases.

Reference: *Quar. Jour. Econ.*, XXIV, 1910, 597–601. Frank Haigh Dixon.

LONG, JOHN DAVIS. John D. Long (1838–) was born at Buckfield, Maine, October 27, 1838. He was admitted to the bar in 1861, and after 1862 practiced at Boston. He entered the Massachusetts house of representatives as a Republican in 1875, and from 1876 to 1878 was speaker. In 1879 he was elected lieutenant-governor, and from 1880 to 1882 was governor. He was elected to Congress in 1882 and sat in the House of Representatives until 1889, declining further nomination. In 1884 he was a delegate to the Republican national convention at Chicago, where he nominated George F. Edmunds of Vermont for the presidency. In 1897 he became Secretary of the Navy, resigning in 1902 to resume his law practice. The reorganization and expansion of the navy, begun under William C. Whitney in Cleveland's first administration (1885–1889), were continued under him with notable energy and success, particularly after the impetus given to naval development by the war with Spain, in 1898. He has written *The Republican Party* (1900), and *The New American Navy* (2 vols., 1903). See Navy, Department of. Reference: Secretary of the Navy, *Annual Reports* (1897–1902). W. MacD.

LORDS OF TRADE. Before 1660 the colonial policy of England was directed either by the king, assisted by special committees of the privy council, or by parliamentary commissions. In 1660 Charles II established a dual system of control consisting of a committee of the privy council for foreign plantations, and a council of trade which was not confined to members of the privy council. In 1675 a new committee of twenty-four privy councillors was established which was known as the lords of trade.

It was the duty of this body to gather all the information possible concerning the commercial and administrative affairs of the colonies; and by its representation to advise the action of the privy council. Agents were sent to, and demanded from, the colonies, and frequent inquiries and despatches were addressed to them. The lords of trade drafted the proclamations of the King, the charters for the colonies, and commissions and instructions for the governors; they heard disputed cases referring doubtful points to the law officers of the Crown. In particular they were charged with the interpretation of the Navigation Acts (*see*) and many of the improvements in that system were due to their recommendations.

Considering the information at their disposal they were just and fair toward the colonies, and from 1675 to 1689 they were an efficient body. In 1696 they were superseded by the board of trade (*see*).

See Acts of Trade; Boards of Trade; Colonization by Great Britain in America; Navigation Acts.

References: C. M. Andrews, *Colonial Self-Government* (1904), 26–40, *British Commit-*

tees, Commissions, and Councils of Trade and Plantations, 1662–1675 (1908), chs. iv–v; O. M. Dickerson, *Am. Colonial Govt.* (1912), 17–20. EVERETT KIMBALL.

LOS ANGELES. Since 1900, Los Angeles, California, has developed an exceedingly liberal government that seems to be working out successfully her general municipal problems and her two special problems: (1) the securing of an ample supply of water (as the annual rainfall in Los Angeles is but 14 inches); and (2) the development of harbor facilities on the Pacific Coast (for the city hall is 22 miles from the city harbor at San Pedro, with which the city is connected by a shoe-string district about half a mile wide.

Organization of City Government.—The government of Los Angeles, organized under a freehold charter, is of the mayor-council type, with few elected officials, highly centralized mayoralty appointive power, and numerous but uncoördinated administrative commissions. All elective officials are chosen for terms of four years. The council consists of one chamber of nine members elected by the city at large, biennial elections making the council a continuous body. Besides the councilmen, the elected officials include seven paid members of the school board, selected at large at biennial elections, the assessor, the auditor, the attorney and the mayor. All other important administrative officials and all boards are appointed, and may be removed, by the mayor with the consent of the council, their regular term of office being four years. Most employees of the city are appointed for merit.

Popular Control of Government.—Popular control of the government in Los Angeles consists of the: (1) direct primaries and biennial elections, (2) initiative (*see*), (3) referendum (*see*), (4) recall (*see*). The nominees for elective office are chosen in: (1) Direct primaries (*see*) without party designation. Nominees who receive a majority of the votes cast at the primary are elected, not nominated. The hold of the machine has been effectively broken through the use of this improved method of nomination by an awakened civic body. (2) The initiative petition is permitted by the charter, the voters (5 per cent to 15 per cent) being allowed to propose ordinances or charter amendments which may be submitted to popular vote, if the council fails to pass the proposed measure. The charter amendments covering the initiative, referendum and recall were adopted in 1903; the number and character of the charter amendments adopted since that time bear witness to the use of these devices. Among those proposed by initiative were the charter amendments for direct primaries and for election of councilmen and members of the board of education on general tickets. (3) Not only is the referendum used for the adoption of charter amendments (majority vote) and the ratification of bond issues proposed by the city council (two-thirds vote); but it may be invoked, in the form of the referendary petition, to prevent the final enactment of any ordinance, not deemed urgent, or the final grant of any franchise, which the people oppose. Ten per cent of the voters may force the council to rescind its action or submit the question to a popular vote. No public utility, or water, harbor, river-bed or other rights of the city may be sold, leased or otherwise disposed of, without the approval of two-thirds of the voters, thus safe-guarding the public property and enterprises of the city.

The Recall.—Los Angeles has attracted considerable attention by the adoption (1903) and application (1904, 1909) of provisions for the recall of public officials and of officials appointed to vacancies. In 1913 Los Angeles recalled all of her officials by the adoption of an amendment which terminated all offices before the expiration of the regular term. In case of popular disapproval of one official regular recall petitions may be presented by 25 per cent, of the vote cast for that office, reasons for the recall being stated. At the recall election the elective official whose removal is desired becomes a candidate without further action, unless he resigns. The candidate who receives the largest vote at the special election is chosen to the office. If the office is appointive, it is declared vacant if a majority of the voters at the special election desire the removal. The recall has been used twice in the history of Los Angeles to secure the removal of elected officials, both of whom were minority candidates elected in "three-cornered" contests by comparatively narrow margins. The threat to use the recall has been made in several cases where there was danger that the city government would give away important rights or franchises.

Municipal Activities and Enterprises.—There is a sharp contrast in Los Angeles between the municipal extravagance and inefficiency of the nineteenth century and the comparative success of city activities in the twentieth. On the one hand we have, *e. g.*, the squandering, by the first American government, before 1855, of nearly thirty square miles of city territory inherited from the Mexican pueblo; on the other, the rapid development of two forms of modern municipal action. (1) The first of the important municipal undertakings is the water system. Los Angeles retained from Spanish days the water rights to the Los Angeles river. In 1901 the city purchased for $2,000,000 the property of the Los Angeles Water Company, the lessees of the city water rights, which had supplied the entire city. Under good management, with much lower rates than before, the city made a sufficient net profit to cover this sum within five years. Before this time it was decided to bring water from Owens River by

an aqueduct 215 miles long that crossed a desert and a mountain range. This work as it was planned originally is being done within the original estimates of cost and time; but extensions for the distribution of the water and other supplementary expenditures have given Los Angeles a great debt. By the erection of power plants at suitable points on the aqueduct the city will supply its own needs and many of its citizens with electricity, a second kind of municipal enterprise. A third kind is the system of harbor docks that the city is about to construct on its frontage at San Pedro. A fourth is the proposed municipal railway to connect the harbor with the city. A fifth was the *Municipal News*, a municipal newspaper, which was discontinued in 1913. Still another form of activity is the pension system for firemen and policemen. To manage these enterprises administrative departments have been created: that of public works, for the construction of aqueducts, reservoirs, harbor improvements, street and other improvements within the city; and that of public service, to manage and supervise all utilities owned by the city. (2) In order to protect public interests two important new supervisory commissions have been created. To the harbor commissioners is entrusted power to supervise the maintenance and use of wharves, docks and sea walls, with control of rates and regulations for public or private harbor service. The board of public utilities, which supervises other public utilities, has more limited power than in some eastern states, but supervises the granting and observance of franchises, the physical valuation of corporation property, and controls rates, subject to the supervision of the council.

See CHARTERS, MUNICIPAL; CITY AND THE STATE; MUNICIPAL GOVERNMENT.

References: J. D. Works, "A City's Struggle for Political and Moral Freedom" in *Arena*, XLI (1909), 353–357; C. D. Willard, "Municipal Progress in Los Angeles" in National Conference of Good City Government, *Proceedings* (1905), 97–110; T. A. Davis, "Recall as a Measure of Control by the People" in *ibid* (1906), 382–387; F. J. Stilson, "Recall in Los Angeles" in *ibid* (1909), 326–333; B. A. Heinly, "A Combined Water Supply, Irrigation and Power Project" in *Engineering Magazine*, XXXVIII (1909), 161–174, "Construction and Completion of the Los Angeles Aqueduct" in *ibid*, XLV (1913), 1–17; "Carrying Water through a Desert" in *Nat. Geograph. Magazine*, XXXI (1910), 568–596; C. A. Moody and others, "Los Angeles and the Owens River Project" in *Out West*, XXIII (1905), 417–461; *Charter of the City of Los Angeles.*

R. L. ASHLEY.

LOTTERIES. In the penal code of the state of New York, a lottery is defined as a scheme "for the distribution of property by chance, among persons who have paid or agreed to pay a valuable consideration, whether called a lottery, raffle, gift enterprise, or by some other name." The significant point is that a valuable consideration must be paid for the chance of drawing a prize. The name under which the enterprise is conducted has no significance.

Lotteries thus defined are prohibited throughout the United States; by constitution and statute in 37 states (Ala., Ark., Cal., Colo., Del., Fla., Ga., Ida., Ill., Ind., Io., Kan., Ky., La., Md., Mich., Minn., Miss., Mo., Mont., Nebr., Nev., N. Y., N. J., N. D., O., Ore., R. I., S. C., S. D., Tenn., Tex., Utah, Va., Wash., W. Va., Wis.), and by statute only, in the remaining eleven. They are also prohibited in the District of Columbia and are denied the use of the mails by federal statute.

In 29 states the constitutional prohibition applies both to the conducting of lotteries within the state and the sale of tickets of any lottery, whether conducted within the state or outside of it, while in eight states (Fla., Ida., Md., Nebr., R. I., S. D., Wash., Wis.) the former provision only is found. This omission in the constitutional provisions of the latter states, however, is overcome by the statutory provisions in their penal codes.

In addition to the conducting of a lottery and the sale of lottery tickets, which are universally regarded as misdemeanors, one or more of the following offenses are prohibited in many codes: letting a building for a lottery; assisting at a lottery or acting as an agent; advertising a lottery; offering lottery tickets for sale; purchasing lottery tickets; having lottery tickets in one's possession; printing lottery tickets; insuring lottery tickets; advertising the insurance of lottery tickets.

The effectiveness of state legislation is increased by municipal ordinances in a number of states and by the federal act of March 2, 1895 (28 *Stat. L.* 963), which aims to prevent traffic in lotteries through national and interstate commerce and the postal service, by making the act of carrying into the United States or through the United States from one state to another, by mail or otherwise, of any lottery ticket or slip, or any advertisement of a lottery an offense punishable by fine or imprisonment.

The United States will not deliver mail to a bank, express company or private individual if it has reason to suppose that this is correspondence or other matter pertaining to lotteries. At present lotteries are prohibited in every state, territory and dependency within the United States.

See GAMBLING; POLICE IN AMERICAN CITIES; POLICE POWER; PUBLIC MORALS, CARE FOR.

References: *Forum*, XII (1892), 555, 560, 807; *Outlook*, LXXIII (1903), 3; A. R. Spofford, "Lotteries in Am. Hist." in Am. Hist Assoc., *Annual Report*, 1892, 173–195.

S. McC. LINDSAY.

LOUISIANA

Early History.—The first European settlements within the present limits of Louisiana were made between 1699 and 1718. To 1712 the scattered French settlements were ruled by the commanders of the military posts. From 1712 to 1731 the colony was under proprietors, first Antoine Crozat to 1718 and next under John Law's Mississippi Company. During this period the administration was conducted by a governor, an intendant, and a superior council all nominated by the proprietor but appointed by the king. In 1762 Louisiana was ceded to Spain which reorganized the colonial government, giving to the governor several administrative assistants, and replacing the Superior council with the *cabildo*, an administrative and judiciary body.

Neither under the French regime nor under the Spanish was any popular participation in government allowed. The laws administered were, under the French, the *coutume de Paris*, the edicts of the King, and the regulations of the governor and superior council; under the Spanish, the colonial code of the Indies was introduced and at the beginning of his term each governor, like the Roman praetor, stated the general principles by which he would govern. The Spanish rule was more efficient than that of the French.

Early Constitutions.—In 1803 the province of Louisiana was annexed to the United States (*see* LOUISIANA ANNEXATION). In 1804 territorial government was established. The upper part of the territory was cut off and called Louisiana; the lower part was called the Territory of Orleans (*see* ORLEANS, TERRITORY OF). In 1812 the Territory of Orleans, renamed Louisiana, was admitted as a state of the Union under a constitution which made property-holding a qualification for voting and for holding office, and provided for the appointment by the governor of nearly all officials and for long terms of office. For more than thirty years the state developed under this constitution, the people demanding more and more a freer participation in government. In 1845, a more liberal constitution was adopted, the property qualification for office and for voting was abolished and the appointing power of the governor greatly curtailed. At the same time the field of the legislature was much restricted, especially as to financial matters. A scheme of public education was outlined and slowly put into operation. Encouraged by this victory the popular leaders demanded complete democracy and in the constitution of 1852 obtained it. Nearly all officers and the judgeships were made elective; the restrictions on the legislature were relaxed somewhat; and further provision was made for public education. This constitution suffered no radical change, except for the abolition of slavery, until 1868.

Secession and Reconstruction.—A state convention passed an ordinance of secession in January, 1861. After May, 1862, the state was under two governments: the Confederates with the old government held the greater part of the state with the capital at Shreveport; the federal forces held New Orleans and nearby territory and in 1864 set up a "Union" state government under a constitution formed by a convention at New Orleans. This constitution provided for the abolition of slavery; otherwise it was not greatly different from that of 1852, and the government established under it was, in 1865, after the fall of the Confederacy (*see* CONFEDERATE STATES) extended over the entire state.

Though recognized by the President and in operation for four years this government was regarded by Congress as provisional only, and in 1867–1868 a radical transformation was made under the Reconstruction (*see*) Acts. A convention composed largely of negroes framed a new constitution which again centralized the government, gave a wide field to the legislature, provided for the civil and social equality of the negroes while disfranchising the leading whites, and lodged extraordinary powers of appointment and administration in the executive in order that it might hold together the new government. The mass of the whites so opposed this government that after 1870 it had little authority outside of New Orleans and the river towns. The country districts were almost without organization or ruled themselves through lynch law. The state was plunged into heavy indebtedness, while the state government as a whole was a pawn in the hands of the radical leaders at Washington. Several attempts at revolution failed after temporary successes, but in 1877, as one of the results of the Hayes-Tilden election controversy (*see* ELECTORAL COUNT), the radical state government was left without federal support, and the white party gained control.

By the constitution framed in 1879 the powers of the legislature were strictly limited and the social legislation of the reconstruction period was abrogated, but in order to reap the full fruits of victory the extreme powers of the executive were continued and used to the limit.

Present Constitution.—Under this constitution the government continued for nineteen years, but with increasing dissatisfaction among the people because of the nar-

row range of governmental functions, and and in 1898 a new instrument of government was framed. By this the exclusion of the negro from participation was accomplished in law as it had long been in fact, the appointing power of the governor was lessened, and the legislature again fettered, though amendment was made easy. Forty amendments have been adopted since 1898, most of them designed to extend popular participation in government. The present government of Louisiana consists of a legislature of two houses—a senate of forty-one and a house of one hundred and sixteen members elected for four years; a governor elected for four years and not eligible for immediate reëlection; a lieutenant governor; auditor; treasurer; secretary of state; attorney general; superintendent of education —all elective. A judiciary, elective since 1904, embraces a supreme court of five members elected by districts with appellate jurisdiction only; three circuit courts of appeal each consisting of three judges elected by districts and having appellate jurisdiction only; twenty-nine district courts having original jurisdiction in civil and criminal cases; the local judiciary of New Orleans; city courts in places of over 5,000; and the justices of the peace and notaries. A "limited" constitutional convention held in 1913 revised the constitution of 1898 merely by writing in the amendments that had been adopted since 1898 and by arranging for the refunding of the state debt. A majority of the convention held that a convention can not be limited by legislative act, and that this one really had full power.

In addition to the regular departments of government there is a large number of boards and commissions with broad administrative powers; the railway commission, boards of charities and corrections, of health, of engineers, of agriculture and immigration, of appraisers, of education; fifteen levee boards; and six other minor boards in addition to the supervisory bodies over sixteen state institutions (*see* COMMISSIONS IN AMERICAN GOVERNMENT). All are appointed by the governor with the consent of the senate, except the board of appraisers which has an ex-officio membership, and the railway commission which is elective by districts. The local government of Louisiana resembles that of other states of the South with two exceptions: the city of New Orleans is, like New York City, exempt from much of the general state legislation; and the parish police juries, though corresponding somewhat to county commissioners in other states, have a much wider administrative power.

BOUNDARIES OF THE STATE OF LOUISIANA, SHOWING TERRITORIAL CHANGES

Characteristic of Louisiana's constitutional history may be mentioned the centralized government, the strong executive power, the ease of constitutional amendment, and the recent very rapid progress of decentralization and increase of democratic participation. The centralized government has been until lately acceptable to the people. It is an inheritance from the Franco-Spanish colonial period, just as is also

the peculiar executive in which, until 1904, an enormous appointing power was lodged and which is still more powerful than that of any other American state. As the important state offices are made elective numerous commissions and minor offices are created, all at the disposal of the governor. Not only the governor, but the inferior state officers also are in close touch with the lower branches of the state and local administrations. In recent years the policy of decentralization has been popular and local government has made much progress, but the state government is still above other American states in the measure of its centralization. As to amending the constitution, the legislature is so limited that measures of great importance must as a rule be framed as amendments and submitted to popular vote. This method of referendum frequently occurs. The commission form of government for towns and cities has become popular, New Orleans being one of the largest cities now under that form.

Legal System.—The legal system of Louisiana is based to a considerable extent upon the civil law institutions which survived the Franco-Spanish occupation or were introduced with the Code Napoleon, as well as upon the common law principles brought in by the Anglo-American element since 1803. Domat, Pothier, Justinian, the Code Napoleon and modern French cases and authorities are still cited in Louisiana courts.

Parties.—For a generation after the purchase by the United States party lines were drawn between the nationalities—Creoles against Anglo-Americans—until about 1830, when the Whig organization secured control of the state and held it until 1845. The Democrats who succeeded to the control remained in power until the Civil War. During the reconstruction the "radicals," as the Republicans were called, maintained a majority mostly of blacks until 1877, when the state again became Democratic and the Republican vote decreased to a negligible quantity. Since then there has been only one real party. A strict primary law results in the elimination of many voters and makes it possible for the very efficient "regular organization" to exercise as much influence in Louisiana as Tammany in New York. A slight tendency for the country to line up against the New Orleans vote is evident. There is a strong tariff section in the Democratic party especially in the sugar and rice parishes.

Population.—The population in 1767 was 5,552; in 1803 about 40,000; in 1830, 215,739; in 1850, 517,762; in 1910, 1,656,388.

See ANNEXATIONS TO UNITED STATES; ORLEANS TERRITORY; WEST FLORIDA.

References: F. N. Thorpe, *Federal and State Constitutions* (1909), III, 1559–1617; A. Phelps, *Louisiana* (1905), I; A. Fortier, *Louisiana* (1909), *Hist. of Louisiana* (1904); C. E. A. Gayarré, *Hist. of Louisiana* (1903).

WALTER L. FLEMING.

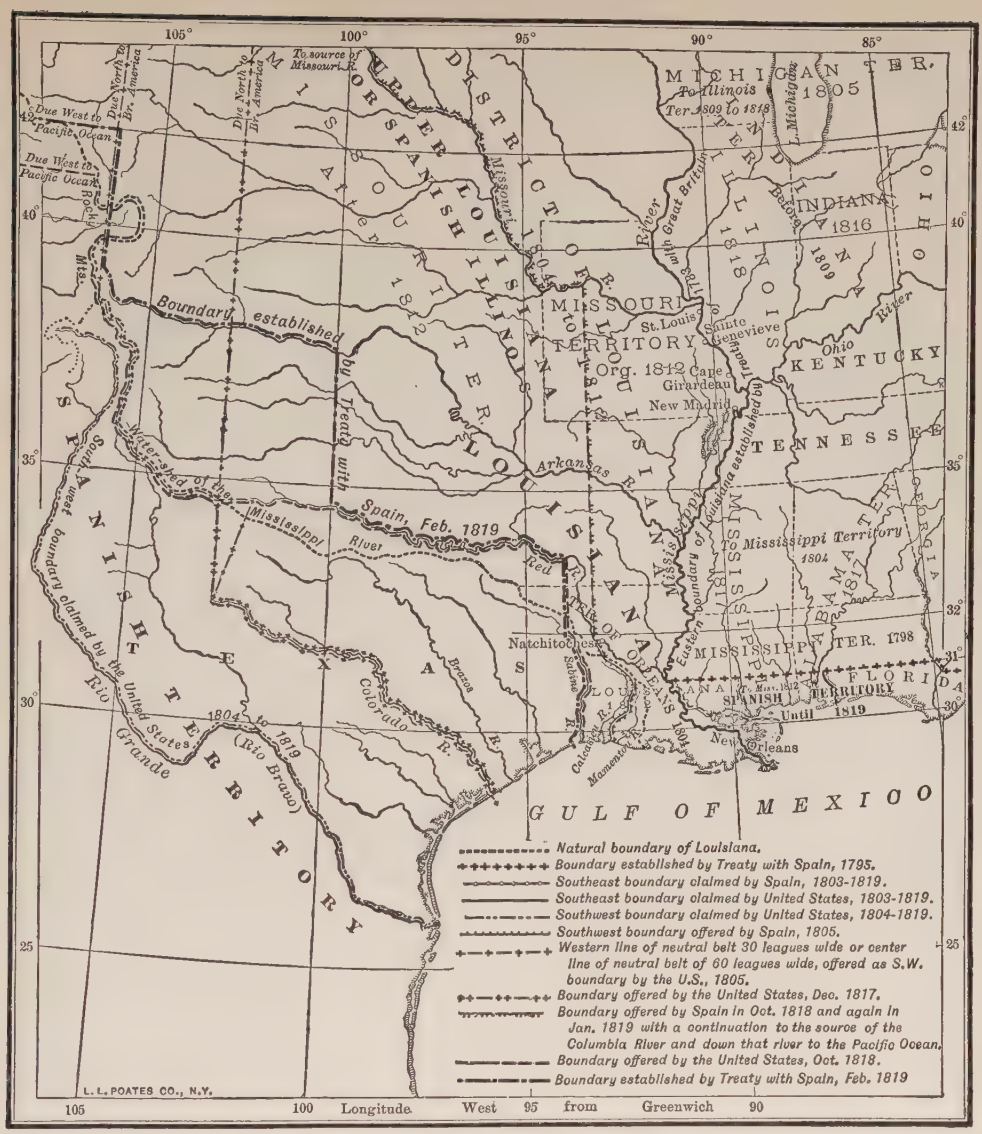
LOUISIANA ANNEXATION. Importance of the Mississippi.—The economic and comcial importance of the Mississippi, connecting the choicest part of the continent with the high seas, made it the object of contention for ownership and control until the young United States finally secured the supremacy. This key to the Middle West largely determined the history of the interior, the most important theatre of American national life.

From the beginning of American national history, Spanish policy at New Orleans, and its irritating effect on interests of the people of the trans-Appalachian region, suggested that the Mississippi Valley must belong to a single nation. This destiny became more evident with the clamor of westerners for free navigation, the danger of conflict between East and West, and the various projected movements against New Orleans; then came the merging of French expectations into plans for recovery of Louisiana by force or by cession—terminating in the attempt of Napoleon to establish a great colonial dominion in America.

Effect of the Treaty of St. Ildefonso.—In 1801 came rumors that weak Spain had been induced to cede Louisiana to strong and restless France, suggesting that France was adopting the views of those who regarded the Appalachians as a natural western boundary for America. Later confirmation of the cession of Louisiana by the treaty of St. Ildefonso (October 1, 1800) produced an Anglo-American *entente cordiale*, and even a thought of alliance; and led Jefferson to instruct Livingston to begin negotiations for the acquisition of the eastern bank of the lower Mississippi. The withdrawal of the right of deposit by the Spanish intendant at New Orleans (October 16, 1802) aroused great excitement; and Congress authorized the President to call out 80,000 militia, and appropriated $2,000,000 to purchase the island of New Orleans and adjacent eastern lands. Early in January, 1803, Jefferson sent Monroe to join Livingston in negotiations to purchase New Orleans and the Floridas, and with instructions, in case of French obstinacy, to open negotiations with the British Government to prevent French occupation.

Treaty of Cession.—By a treaty of cession (April 30, 1803), which followed the vagueness of the Ildefonso treaty in the boundary clause, "Louisiana as it is in the hands of Spain, and as it was when France possessed it," the United States obtained 1,171,931 square miles for $15,000,000, of which $3,500,000 was paid to satisfy claims of Americans. This acquisition shaped the foundations of a new policy, and opened the road to an American empire.

Constitutional Issue.—Doubting his power, under strict constitutional interpretation, to incorporate such a vast territory, Jefferson proposed a kind of indemnity amendment to legalize his act and to authorize the admission



SOUTHERN LOUISIANA BOUNDARY CONTROVERSY

of states from the territory. Fearing, however, that Napoleon's right to dispose of the territory might be questioned by France as a pretext to break the treaty, and influenced by Spain's formal protest against the alienation of the territory, he desired prompt legislation for consumating the purchase with as little discussion as possible. Hence he acquiesced in the views of Gallatin and other members of his Cabinet that the American government has power to annex foreign territory without an amendment to the Constitution.

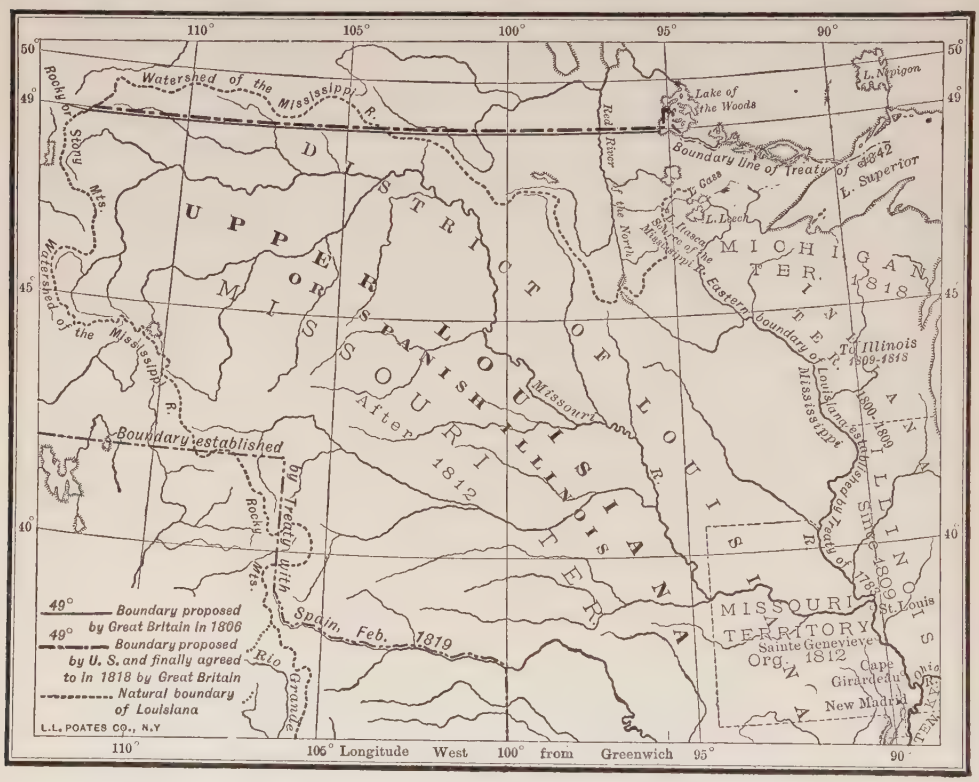
Ratification.—Ratification was prompt—two days after the Senate received the documents from Jefferson. In the House, during the consideration of an appropriation to execute stipulations of the treaty, the opponents of the cession began a struggle to hinder action. They first questioned the title of France to the territory ceded; but the validity of the treaty was sustained by a vote of 59 to 57. Next, on the ground that the treaty was unconstitutional, they opposed the bill authorizing the President to take possession of the territory and to appoint officials; but the arguments for constitutionality were sustained in committee of the whole by 90 to 25.

Transfer of the Territory.—With imposing ceremony at New Orleans, on November 30, 1803, in spite of protests of the Spanish minister at Washington, the French authorities received from the Spanish the formal delivery of New Orleans and Lower Louisiana. December 20, it was transferred to the United States,

represented by Governor Claiborne. For a year after formal transfer the Spanish military forces and officials remained at New Orleans, causing much trouble. Later (March 9, 1804) upper Louisiana was also formally transferred to the French who transferred it to American authorities, March 10.

Status and Government.—Although the treaty of cession provided that the inhabitants as soon as possible should be admitted into the Union and to the "enjoyment of all the rights, advantages and immunities of citizens of the United States," there was no clause providing for the future admission of states from the territory. Under act of October 31, 1803, Jefferson ordered General Claiborne to take possession and to govern with the almost unrestricted power of previous Spanish officials. The country was divided into two parts separated by the parallel of 33°. The government of the upper was to be administered by the governor and judges of Indiana territory; that of the southern, the Territory of Orleans (*see*), was vested in a governor, a secretary and a council of thirteen—all appointed by the President.

See Annexations to the United States; Boundaries of the United States, Interior; Dependencies; France, Diplomatic Relations with; Louisiana; Territory, Acquired, Status of; West Florida.



Northern Louisiana Boundary Controversy

References: H. Adams, *Hist. of the U. S.* (1889), II, chs. ii–v; E. P. Carpenter, *Am. Advance* (1903), chs. iii–iv; E. Channing, *Jeffersonian System* (1906), chs. v, vi; J. K. Hosmer, *Louisiana Purchase* (1902), chs. iii–x; W. C. Ford, Ed., *Thomas Jefferson's Works* (1897), VIII; S. M. Hamilton, Ed., *Monroe's Writings* (1901) IV; J. B. Moore, *Arbitrations* (1898), V, 4432–4446; A. B. Hart, *Foundations of Am. Foreign Policy* (1901), §§ 47, 62–68; Alexander Johnston, *Am. Pol. Hist. 1763–1876* (1905), I, ch. xiii; James Madison, *Writings* (1867), II, 177–204; J. B. McMaster, *United States* (1896), II, 621–35; F. A. Ogg, *Opening of the Mississippi* (1904), chs. x–xiv; C. F. Robertson, "Louisiana Purchase" in Am. Hist. Assoc., *Papers*, I (1885), 253–290; Theodore Roosevelt, *Winning of the West* (1829), IV, 261–286; Francois Barbé-Marbois, *Histoire de la Louisiane et de la Cession* (1829, Laurence's translation, 1830); *House Ex. Docs.*, 57 Cong., 2 Sess., No. 43 (1903).

J. M. Callahan.

LOW, SETH. Seth Low (1850–) was born at Brooklyn, N. Y., January 18, 1850. From 1875 to 1888 he was in active business. In 1878 he organized, and was the first president of, the Brooklyn bureau of charities. His political career began in 1880, when he was

made president of the Young Republican club in the Garfield campaign. The next year he was elected mayor of Brooklyn on an independent ticket, and held the office until 1886. His administration attracted national attention. Under the charter, the heads of municipal departments were appointed by and were responsible to him; he introduced competitive examinations for the selection of many officials; and he improved the system of taxation. In 1897 he was an independent candidate for mayor of Greater New York, but was defeated. In 1890 he became president of Columbia University. In 1899 he was a delegate to the peace conference at The Hague. He resigned the presidency of Columbia in 1901 to become mayor of New York. The chief successes of his administration were the reduction of taxes, the improvement of the schools, and the reform of the police department. He lacked efficient party support, however, and in 1903 was defeated for reëlection. In 1907 he was elected president of the National Civic Federation, which office he still holds (1913). See MAYOR AND EXECUTIVE POWER IN AMERICAN CITIES.

W. MACD.

LOWELL, JAMES RUSSELL. James Russell Lowell (1819–1891) was born at Cambridge, Mass., February 22, 1819. He first won national reputation by the publication, in 1848, of the first series of *Biglow Papers*, humorous and satirical poems which touched the politics of the day and showed him as a strong opponent of slavery. From 1856 to 1886 he was professor of French and Spanish literature and belles-lettres at Harvard. He became a Republican in 1856. From 1857 to 1861 he was editor of the *Atlantic Monthly*, and from 1863 to 1872 joint editor with Charles Eliot Norton of the *North American Review*. A second series of *Biglow Papers* appeared in 1867. In 1876 he was a Republican presidential elector for Massachusetts, and the next year was appointed minister to Spain. In 1880 he was made minister to Great Britain, where for the next five years he served with great acceptance and won to an unprecedented degree the regard of the English people. He died at Cambridge, August 12, 1891. See SLAVERY CONTROVERSY. References: J. R. Lowell, *Works* (1890–92); H. E. Scudder, *James Russell Lowell: a Biography* (1901).

W. MACD.

LOYALISTS. The Loyalists in the American Revolution were the colonists who adhered to the royal cause. Some clung to that cause from the first; others were, in the days before the war, opponents of the British schemes for taxing the colonies and did not believe in the political theories upon which taxation was based, but when opposition to the ministerial measures went so far as armed resistance, they left the American and joined the British cause. Still others went with the popular American movement until some discouraging phase of the war, or perhaps distaste for the French alliance, caused them to lose heart or sympathy with the Revolution, and then they went over to the British side. At the beginning of the struggle those colonists who were most closely related with the royal governors, those whose interests or theory of government made them favor the established order, the Episcopal clergy dependent on the aid of the British missionary societies, crown officers and persons dependent on them, tended to become Loyalists. In general the more prosperous and contented element in American society contributed a majority of their number to the Loyalists.

Feeling against them on the part of the self-styled Patriots was bitter. They were called enemies of their country, and mobs attacked their persons and property. Whig committees published their names, "sending them down to posterity with the infamy they deserve." Fear of this violence seems to have kept many of them inactive in the early stages of the Revolution, and that inaction made them lose their only opportunity of effective, united opposition to the Whig movement. After the second Continental Congress had suggested that the states should disarm them, the action to that end was prompt in most of the states, and, thereafter, the Whig legislatures passed test acts requiring certain oaths of allegiance which no honest Loyalist could take. Many Loyalists fled to England, to the West Indies and to various parts of Canada, Nova Scotia and the region near Niagara being the chief centers. Others fled to New York City and there joined the British army. The statistics of the loyal volunteers seem to show that at one time as many Loyalists were serving in the British army as there were Patriots in the Continental army.

Those who remained at home and tried to avoid trouble with their Whig opponents became subject to fines and extra taxation, and, whenever the British army approached, they were imprisoned or marched away to distant places where they could do no harm. As the struggle continued, the Patriots began to deport and banish the Loyalists, and to confiscate their estates. During the negotiations for peace, the British Government made every effort to have the Loyalists compensated for these losses, but the effort failed and the British ministry was itself obliged to make the compensation, amounting to nearly thirty millions of dollars.

See REVOLUTION, AMERICAN, CAUSES OF.

References: G. E. Ellis, in J. Winsor, *Hist. of America* (1888), VII., 1851; A. C. Flick, *Loyalism in New York* (1901); C. H. Van Tyne, *The Loyalists in the Am. Revolution* (1902), *Am. Revolution* (1905); A. E. Ryerson, *Loyalists and their Times* (1880).

C. H. VAN TYNE.

LOYALTY TO PARTY. By becoming a member of a political party a man does not surrender his right of private judgment. Though bound to act for those principles for which the party stands and to seek party success for the sake of those principles, he is not under obligations to follow party leaders in a course of action which, while calculated to strengthen temporarily the organization, is at the same time likely to prove inimical to those wider interests of the state which a party exists only to conserve and promote. To every good citizen the welfare of his country and the interests of the whole people stand foremost and true loyalty to his party can never conflict with enlightened patriotism. To keep his party faithful to the object of its existence one must sometimes act against its apparent welfare. No great political organization can maintain its highest level of efficiency and usefulness without the consciousness of a body of adherents of high ideals, independent in opinion and fearless in action, who may be relied upon to administer trenchant criticism and wholesome discipline even to the extent of defeat at the polls should the higher good of the state demand it. See INDEPENDENT MOVEMENTS IN POLITICS; PARTY, PLACE AND SIGNIFICANCE OF; THIRD PARTIES; VOTING, INDEPENDENT. **References:** J. Macy, *Party Organization and Machinery* (1904), ch. xxi; J. A. Woodburn, *Political Parties and Party Problems* (1903), ch. xxi. **J. M.**

LUTHER vs. BORDEN. As the result of an effort to supersede the state government of Rhode Island as it existed under its colonial charter, no constitution having been adopted when the state became a member of the Union, a voluntary convention adopted a constitution under which an attempt was made to organize a state government. Resistance of this pseudo government to the power of the existing state government led to the Dorr (*see*) Rebellion (1841). As a result of this conflict, Borden, acting under authority of the existing government, broke and entered the house of Luther for the purpose of arresting him, and Luther instituted an action in a Federal court against Borden to recover damages for trespass, and on appeal to the Supreme Court of the United States, the question considered was whether the judicial department had authority to determine the validity of the existing state government [7 *How.* 7 (1848)]. It was held that under the provision of the Federal Constitution that "The United States shall guaranty to every state in this union a republican form of government" (Art. IV, Sec. iv), the question as to the existence and validity of a state government was in its nature political and not judicial, and therefore committed to the legislative department of the Federal Government and not to its judiciary; with the result that the action of Borden in exercising authority under the existing state government was lawful.

This case has been consistently adhered to in determining analogous controversies and has recently been followed in deciding that a state statute enacted in accordance with constitutional provisions for the initiative and referendum would not be held invalid in the courts on the contention that the government thus provided for was not a republican government, the enforcement of the guaranties as to republican government resting solely with the political department of the Federal Government [*see* Pacific States Telephone & Telegraph Co. *vs.* Oregon (1912), 223 *U. S.* 118].

See DORR REBELLION; POLITICAL QUESTIONS AND JUDICIAL AUTHORITY; REPUBLICAN FORM OF GOVERNMENT.

References: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 58–62.

EMLIN MCCLAIN.

LYNCHING. Origin of the Term.—The killing of an obnoxious individual by a mob as a penalty for real or supposed crime is an incident of all civilizations; and many formal organizations of people have undertaken to supplement or replace legal procedure by dealing with criminals outside the law. Such were the *Vehmgericht* of Germany; the Spanish *Hermandad;* the California Vigilance Committees (*see*); and some phases of the Ku Klux Klan (*see*). This practice as a recognized system has now ceased in almost every part of the civilized world, except some portions of the United States.

During the Revolution Charles Lynch of Virginia (from whence the term) was the head of an unofficial band which seized and severely whipped loyalists; and for a time the term lynching meant a flogging. The practice continued, partly as an instrument of the frontier where regular justice was hard to obtain, partly to deal with offenses which were thought to be too heinous for ordinary treatment. Such were the murder of white men, particularly masters by negroes, and the rape of white women by negroes. The usual penalty exacted by mobs or assemblages was hanging; occasionally criminals were burned to death. The term lynching thus came to mean the taking of the life of the supposed offender, outside of judicial process.

Progress of Lynching.—The practice appeared chiefly in the southern and southwestern states. In a notable case in 1837 commented upon by Abraham Lincoln at the time, a negro was burned at the stake near St. Louis for the murder of a peace officer. After the Civil War when the restraint imposed by slavery had ceased, lynching was freely applied to negro criminals and supposed criminals. According to the following table

compiled from the findings of the *Chicago Tribune* there were 3,539 lynchings from 1885, when the collection of lynching statistics began, to 1912:

Year	Number of Lynchings	Rate per 1,000,000 Population
1885-1889	762	2.58
1890-1894	944	2.88
1895-1899	702	1.95
1900-1904	537	1.36
1905-1909	385	0.88
1910	74	0.80
1911	71	0.76
1912	64	0.67
1885-1912	3,539	1.69

Up to 1909 none of these were reported from New England, and almost none from the former free states; but since 1909 lynchings have occurred at Springfield and Newark, Ohio; Springfield, Illinois; and Coatesville, Pennsylvania. In most of these cases prosecutions followed but broke down through the refusal of the juries to convict. The states in which lynchings occurred in the five years 1908–12 were as follows:

States	Number of Lynchings	Rate per 1,000,000 Population
Florida	40	10.63
Georgia	74	5.67
Mississippi	46	5.12
Louisiana	33	3.98
Alabama	30	2.81
Arkansas	22	2.81
Texas	45	2.31
Tennessee	23	2.11
South Carolina	15	1.98
Kentucky	22	1.92
Oklahoma	14	1.69
Wyoming	1	1.37
Idaho	1	0.61
New Mexico	1	0.61
Montana	1	0.53
West Virginia	3	0.49
Virginia	4	0.39
Missouri	6	0.36
North Dakota	1	0.35
Oregon	1	0.30
North Carolina	3	0.27
Nebraska	1	0.17
Maryland	1	0.15
Illinois	4	0.14
California	1	0.08
Ohio	2	0.08
Pennsylvania	1	0.03

Causes of Lynching.—An analysis of the causes for lynchings shows that only about a third were for violence to women, sometimes by white men, but much more often by negroes. This crime dates very far back. The number of authentic cases of rape of white women by negroes appears to be now about thirty to fifty a year. Approximately another third of the lynchings is for murder, of whites by whites, or whites by negroes, but almost never for the killing of a negro by a negro. The other third is for various lesser crimes or no crimes at all, down to giving testimony or for refusing to give testimony before a court.

Iniquities of Lynching.—The process is not simply extra-legal but anti-legal. It assumes guilt in many cases where guilt cannot be proved and in some cases where it does not exist; it sometimes includes manifestly innocent persons, as the negro woman who was burned at the stake by a mob because she had fled with her husband who had committed a crime.

In the greater number of cases the person lynched has been taken by violence out of the custody of officers of the law. Sheriffs and prison wardens and even militia show little disposition to protect their prisoners against a mob. There are cases of lynching where men have been tried and convicted and would in a few days have been executed in an orderly manner. In very few cases in the South are prosecutions instituted against lynchers, though there have been instances of trial and conviction and even of imprisonment for that offense.

Criticism of Lynching.—The two main arguments for lynching are that the courts cannot be relied upon to do justice, and that the crime of rape should be followed by a more fearful and exemplary punishment than the law allows. Criminals are of course, often set free through technicalities but these are not likely to be invoked in the case of an atrocious crime. The governor's pardoning power releases many bad criminals particularly in the southern states; but would hardly be used against criminals who could by any form of reasoning be thought subject to lynching. So far as lynching is directed against negro criminals the whole machinery of the state governments both North and South is provided and carried out by white people, who ought to know how to protect their race by legal methods. As for the defense that lynching is a needed warning to the worst of criminals, the practice is freely applied not only to cases of rape but to all sorts of crimes and misbehavior. So far from being a warning the accounts of one lynching are likely to incite another.

Lynching by irresponsible mobs of men of low character cannot be stamped out though they might be punished; but lynching as carried out by respectable men with the approval of the communities in which it happens is a confession of failure of self-government, hence the practice has much diminished of late years. The total number of reported cases in 1906 was 68, in 1911 it was 71, in 1912 it was 64.

See Enforcement; Equality before the Law; Law, Criminal; Life, Protection of; Mobs and Mob Rule; Penalties for Crime; Riots, Suppression of.

References: E. G. Cutler, *Lynch Law* (1905); A. B. Hart, *Southern South* (1910), chs. xiv, xv; F. L. Hoffman "Fewer Lynchings" in *N. Y. Times*, Mar. 4, 1913; *Am. Year Book, 1911*, 345, *ibid, 1912*, 440; bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 261.

Albert Bushnell Hart.

M

McCULLOCH, HUGH. Hugh McCulloch (1808–1895), one of the abler of American financiers, was a native of Maine but a resident, after his twenty-fourth year, of Indiana. Although an opponent of the National Banking Act of 1862, he was chosen by Secretary Chase to occupy the post of comptroller of the currency, and so to put into operation the system provided for by that measure. His performance of the task was eminently successful and in 1865 he was elevated by President Lincoln to the secretaryship of the Treasury. In this office his principal interest was the retirement of the legal tenders or "greenbacks," and in 1866 he procured the passage of a law providing for the inauguration of this policy. The law was repealed, however, in 1868 before its operation had proceeded far, and the resumption of specie payments was further postponed. During 1870–76 McCullough resided in England as a member of the banking firm of Jay Cooke. During one brief period subsequently—October, 1884, to March, 1885—he held, for a second time, the Treasury portfolio. See LEGAL TENDER CONTROVERSY. **References:** H. McCulloch, *Men and Measures of Half a Century* (1888); J. Sherman, *Recollections of Forty Years* (1895), I, ch. xvii; J. G. Blaine, *Twenty Years of Cong.* (1886), II, ch. xiii; Secretary of the Treasury, *Report*, 1867. F. A. O.

McCULLOCH vs. MARYLAND. This case was decided by the Supreme Court of the United States in 1819 (4 *Wheat.* 316). The opinion, written by Chief Justice Marshall, is generally considered one of the ablest and greatest of all his opinions. It is one of a number of important decisions rendered in the decade after the War of 1812 in which the court outlined fully the principles of the federal system, discussed in an illuminating way the nature of the Union, and laid down broad principles of constitutional construction (*see* COHENS *vs.* VIRGINIA; DARTMOUTH COLLEGE CASE). The controversy arose concerning the power of Congress to establish a national bank and concerning the right of Maryland to tax one of the branches of the bank. The bank had been chartered in 1816, but a number of the states, dissatisfied with the arrangement, passed hostile laws. Maryland sought to require the issue of notes on stamped paper; McCulloch, the cashier of the bank in Baltimore, disregarded the law and was sued. The case was carried to the Supreme Court. "The first question made in the cause," said the court, "is, has Congress power to incorporate a bank?" In discussing this question Marshall entered upon a consideration of the nature of the Union. "The government of the Union," he declared, ". . . is, emphatically, and truly, a government of the people. In form, and in substance, it emanates from them. . . . The Government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land." The powers of sovereignty were declared to be "divided between the government of the Union, and those of the states. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other." The doctrine of implied powers (*see*) was also distinctly stated: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." The power of Congress to establish a bank was, in consequence, upheld.

The court denied the right of the state to tax the bank. The power to tax was held to involve the power to destroy, and, if the states could tax one instrument of government, they might tax every other and thus defeat all the ends of government.

References: K. C. Babcock, *Rise of American Nationality* (1906), 294–296; J. P. Cotton, *The Constitutional Decisions of John Marshall* (1905), I, 302–345. A. C. McL.

McDUFFIE, GEORGE. George McDuffie (1790–1851) was born in Columbia county, Ga., August 10, 1790. In 1814 he was admitted to the bar, and in 1818 was a member of the legislature. In 1821 he was elected to Congress, retaining his seat in the House until 1834, when he resigned. Like Calhoun, he was at first a nationalist and broad constructionist, but changed with the changing sentiment of his state. In Congress he supported the bank, but opposed internal improvements and vigorously denounced protection. He parted company with Jackson on the question of state rights, upheld nullification as a constitutional remedy, and wrote the *Address to the People of the United States*, issued by the South Carolina nullification convention in 1832. On his resignation in 1834, he was elected governor of South Carolina, holding the office until 1836.

In 1842 he succeeded W. C. Preston in the United States Senate, retiring in 1846 on account of ill health. He died at Cherry Hill, Sumter district, S. C., March 11, 1851. See TARIFF POLICY OF THE UNITED STATES. References: D. F. Houston, *Critical Study of Nullification in South Carolina* (1896); J. B. McMaster, *Hist. of the People of the U. S.*, III–VII (1883–1910); G. P. Garrison, *Westward Extension* (1906). W. MacD.

McKINLEY, WILLIAM. William McKinley (1843–1901), twenty-fifth President of the United States, was born at Niles, Ohio, January 29, 1843. He served in the Union army during the Civil War, attaining the rank of major. In 1867 he was admitted to the bar and began practice at Canton. In 1877 he was elected to Congress as a Republican, and sat in the House until 1883. He again entered the House in 1887, and rose rapidly to prominence as a champion of high protection. In 1889 he was made chairman of the committee which prepared the tariff bill known by his name, and which became law in 1890. He was defeated for reëlection, however, by a Democratic gerrymander (*see*) of his district; but in 1892 he was elected governor of Ohio, holding the office for four years. In 1884, 1888, and 1892 he was a delegate to the Republican national conventions. He had declined to consider a nomination for the presidency in 1888, because he was pledged to support John Sherman; but he was nominated in 1896 and elected, receiving 271 electoral votes against 176 for William J. Bryan. Although exhibiting great forbearance with Spain, he was not averse to war with that country in 1898; but criticism of his policy of territorial expansion, especially the acquisition of the Philippines, voiced by the Anti-Imperialists, was not sustained by the country. His gracious and conciliatory methods made him many friends. In 1900 he was reëlected, receiving 292 electoral votes against 155 for Bryan; but on September 6, 1901, he was shot by an anarchist at the Pan-American exposition at Buffalo, and died on the 14th. See REPUBLICAN PARTY; TARIFF POLICY OF THE UNITED STATES. References: M. Halstead, *Life of William McKinley* (1901); J. Hay, *Memorial Address on the Life and Character of William McKinley* (1903); J. D. Richardson, *Messages and Papers of the Presidents* (1896–99), IX, X; D. R. Dewey, *National Problems* (1907); J. H. Latané, *Am. as a World Power* (1907). W. MacD.

McKINLEY TARIFF ACT. After the election of 1888 the Republicans interpreted their success as a condemnation of the Democratic low tariff measure brought before Congress in that year, and as a popular warrant for revising the tariff in the interest of further protection. The Republican Senate bill of 1888 was introduced into the House; but in accordance with custom received the name of the chairman of the committee on ways and means, William McKinley, representative from Ohio. The bill, passed October 1, 1890, repealed duties on raw sugar, reduced rates on steel rails, steel plates, and structural iron, and extended the free list to embrace certain commodities of little commercial importance. Duties were increased upon wool, woolen goods, better grades of cotton goods, linens, cutlery, tin plate, barley, hemp and flax. Of especial interest in the act was a bounty on the production of domestic sugar; and the giving to the President power to levy duties by proclamation on sugar, molasses, tea, coffee, and hides imported from a given country, if in his opinion that country imposed unreasonable duties upon the agricultural or other produce of the United States. This was the first recognition of reciprocity (*see*) by executive order. More significant than the statutory details of the act was the frank acceptance and aggressive insistence of the doctrine of protection as a permanent policy, which characterized the debate. See DUTIES ON IMPORTS, AVERAGE RATE OF; McKINLEY, WILLIAM; TARIFF POLICY OF THE UNITED STATES. References: F. W. Taussig, *Tariff Hist. of U. S.* (5th ed., 1910), 251–283; D. R. Dewey, *Financial Hist. of the U. S.* (1907), 438–440, and references, 435; E. Stanwood, *Am. Tariff Controversies* (1903), II, 243–295. D. R. D.

McLEOD CASE. Alexander McLeod, who asserted that he had been a member of a Canadian expedition which in 1837, destroyed the *Caroline*, a vessel acting in sympathy with the insurrectionists against Canada but anchored in United States waters, and caused the death of a person on board, was arrested in New York on the charge of murder. When the case was pending in the court of New York, the British authorities requested McLeod's release, on the ground that he was acting in the public forces under orders. The United States was unable to interfere directly in the action before the New York court, though the Secretary of State affirmed that if such a case were pending before a United States court it would not be pursued. Governor Seward would not release McLeod on the ground of the request of the British Government; but McLeod was acquitted on proof of an alibi. Congress, realizing what complications might arise from such division of authority, passed an act by which through a writ of habeas corpus the national Government could bring the accused alien in such a case before the United States Court. See CAROLINE AFFAIR; EXTRADITION, INTERNATIONAL; STATES IN THE UNION. References: Daniel Webster, *Works* (1851), VI, 247–269, *et seq.*, F. Bancroft, *W. H. Seward* (1900), I, III; *U. S. Rev. Statutes*, § 753. G. G. W.

MacVEAGH, FRANKLIN. Franklin MacVeagh (1837–) was born in Chester county, Pa., November 22, 1837. In 1864 he was admitted to the bar, and began practice in Philadelphia, but gave up his profession on account of ill health and removed to Chicago, where he engaged in business. In 1874 he was elected president of the Citizens' Association of Chicago, an organization formed to fight corruption in the city government. He supported Cleveland in 1884, 1888, and 1892, while acting with the Republicans in municipal affairs. In 1894 he was nominated by the Democrats as United States Senator, to succeed Shelby M. Cullom, and made a canvass of the state, but was defeated in the legislature. He broke with the Democratic party in 1896 on the question of free silver, and allied himself with the Republicans. In March, 1909, he was appointed Secretary of the Treasury giving up his business to accept it; and that office he held till 1913. He was vice-president of the American Civic Association in 1905, and is a member of the executive committee of the National Civic Federation. See TREASURY DEPARTMENT.
References: E. F. Baldwin, "President Taft's Cabinet" in *Outlook*, XCI, 1909, 691–702; Secretary of the Treasury, *Annual Reports* (1909–1911). W. MacD.

MACHIAVELLI, POLITICAL THEORIES OF. See POLITICAL THEORIES OF CONTINENTAL PUBLICISTS.

MACHINE, POLITICAL. On the way to Philadelphia in 1872, to place General Grant in nomination for the second term, some of the delegates, upon comparing notes, perceived that a new force had appeared in politics. Men who had made the Republican party and had been active in its councils were now being used simply to register a predetermined conclusion, when the better judgment of many of the delegates would have led to a different conclusion. The management of the party had passed into the hands of office-holders. The party machine was being used to exclude the party members from control of the party.

During Grant's second administration such were the revelations of corruption that the Republicans lost control of the two houses of Congress, and, as many believe, the presidency was held in 1876 only by a corrupt use of party power. The party machine is the party organization, and when used for a wrong purpose is generally classed as a corrupt political machine. The organization was designed to assist the masses of the people in the promotion of good government. Properly used it would seek to enlighten the public on the great issues for which the party stands; it would endeavor to include within the active organization as many as possible of the party supporters; the leaders of the party would strive to make the party an effective agency of public opinion. But when the party organizations fall under the control of office-holders or those who have special interests to maintain which are at variance with the public welfare, the corruption of the political machine appears. It is, indeed, not easy to distinguish the corrupt political machine from legitimate party organization, for the difference rests largely in motives and intentions. Reformers who would capture the party in the interest of the public may require a competing organization. This is sure to be stigmatized by the opposing faction as a "corrupt machine."

Nevertheless, in a few of the states and in many of the cities the machine methods have become so obvious that it is impossible to mistake certain distinguishing characteristics. The city machine makes friends with saloonkeepers, with gamblers and other criminal classes, or with large financial interests, seeking to obtain control of the vast sums expended for public improvements. This source of revenue has of late proved vastly more fruitful than the earlier and more primitive methods. By means of these various alliances a large body of pledged supporters is secured.

In addition to ordinary party officers the machine employs a body of workers formerly known as "ward heelers," now more generally called "workers," "gangs," "gunmen," or "district leaders"; some of whom are accustomed to commit various sorts of crime, such as securing fraudulent naturalization papers for foreigners, entering fictitious names on the register of voters, organizing "repeaters" and voting them on election day. The effective machine in a city or state is directed by one man known as the party "boss," who controls the organization. He directs all the forces, superintends the collection and disbursement of funds; to him all members of the machine render obedience. If at any time the boss fails to command obedience he must give place to one who can. Where the entire state comes under machine control there is usually some great and dominant industrial interest which furnishes the sinews of war to the state party boss. In California, for illustration, it was the Southern Pacific Railway, which for many years exerted its powerful influence upon the government of the state. In Pennsylvania it has been a combination of railway, mining and manufacturing interests which has changed the Republican and Democratic and Progressive parties of the state into political machines, leaving the Keystone state no effective instrument of enlightened popular sentiment. A striking characteristic of the machine method is a tendency to destroy the distinction between the two parties. When machine methods are perfected the two party organizations become practically identical in aim and method; that is, are controlled by the same interests, but never by the same boss. They fre-

quently exist as a conspiracy to shut out the people from control of their government in matters of vital interest. In that case party conflicts are a mere humbug maintained for purposes of deception. Some of the characteristics of machine methods appear throughout the country, but fortunately in no state have they reached such development as entirely to displace legitimate party organization.

See Boss and the Boss System of Party Organization; Committees, Party; Spoils System; and under Party.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. lxviii; M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II, Pt. VI, ch. vi–vii; J. Macy, *Party Organization and Machinery* (1904); "How the Republicans Work for Votes" in *Review of Reviews*, 1900; H. J. Ford, *Rise and Growth of Am. Politics* (1898), 301, 313 *et seq.;* C. A. Beard, *Readings in Am. Government and Politics* (1911), 127; C. L. Jones, *Readings on Parties and Elections* (1912), 193–196, 327–334; T. Roosevelt, "Machine Politics in New York City" in his *American Ideals* (1897).

Jesse Macy.

MACON, NATHANIEL. Nathaniel Macon (1757–1837) was born in Warren county, N. C., December 17, 1757. In 1777 he enlisted in the American army as a private, and served until 1782. He then, at the urgency of General Greene, left the army to accept an election to the North Carolina senate, of which he continued a member until 1785. He was a strong opponent of the proposed Federal Constitution, arguing against it on extreme Anti-Federalist grounds. In 1791 he was elected to Congress as a Republican, and sat continuously in the House until 1815. As Speaker from 1801 to 1806, he was the first incumbent of that office to realize its influence upon legislation. The office of Postmaster General was twice offered him by Jefferson, and declined. He voted for the embargo and the War of 1812, but in other respects his attitude was that of an extreme strict constructionist. From 1815 to 1828 he was a member of the Senate, and from 1825 to 1827 president *pro tempore.* In the election of 1824 he received the 24 electoral votes of Virginia for the vice-presidency, the vote of his own state for that office being given to Calhoun. In 1835 he was a member of the North Carolina constitutional convention. He died in Warren county, June 29, 1837. See Speaker of the House. **References:** W. E. Dodd, *Life of Nathaniel Macon* (1903); M. P. Follett, *The Speaker of the House of Representatives* (1896); J. P. Branch, *Historical Papers of Randolph-Macon College* (1901–1905), I, II. W. MacD.

MAD ANTHONY WAYNE. Mad Anthony Wayne is a nickname given to General Anthony Wayne by his soldiers during the American Revolution, because of his impetuous valor, of which his exploit at the attack on Stony Point is a typical example. O. C. H.

MADISON, JAMES. James Madison (1751–1836), fourth President of the United States, was born at Port Conway, Va., March 16, 1751. He entered public life as a member of the Virginia constitutional convention in 1776, and in 1780 became a member of the Continental Congress, where he sat until 1784. For the next four years he was a member of the Virginia assembly. In 1787 he was again elected to Congress, serving also as a member of the Federal Convention. He was the principal author of the Virginia plan submitted to the convention, and kept an invaluable record of the debates. Later he joined Hamilton and Jay in writing the *Federalist,* twenty-nine of the papers being from his pen. He was elected to the first House of Representatives as a Federalist, defeating James Monroe, and retained his seat until 1797; but his opposition to much of Hamilton's financial policy, together with the influence of public opinion in Virginia, led him into opposition, and he presently helped to form the Republican party. He was the author of the Virginia resolutions of 1798, and of the nullification report of 1800. In 1801 he became Secretary of State, and in 1808 was elected President, being reëlected to the latter office in 1812. He died at Montpelier, Va., June 28, 1836. See Federal Convention; Republican Party. **References:** G. Hunt, *Life of James Madison* (1902), Ed., *James Madison's Writings* (1900–1710); W. C. Rives, *Life and Times of James Madison* (1859–68); S. H. Gay, *James Madison* (rev. ed., 1898); H. Adams, *Hist. of the U. S.* (1889–91). W. MacD.

MAGNA CHARTA. The great charter granted by King John (1215) has been a theme of orators and politicians in all periods of English history, partly, writes McKechnie, because of the dramatic background of its historical setting, but chiefly because it has been from its inception down to the present day a rallying cry and a protecting bulwark in every crisis which threatened to endanger national liberties. Maitland describes it as an "intensely practical document." It has been frequently reissued and confirmed. Its provisions are numerous; and some have fallen into desuetude. It confirmed many liberties to the church and redressed many grievances incident to feudal tenures. It protected the subject from illegal distresses for debt or service due to the Crown, and from the tyrannical abuse of the prerogative of purveyance and preëmption and, lastly, wrote Blackstone, it protected every individual of the nation in the free enjoyment of his life and liberty and his property unless declared to be forfeited

by the judgment of his peers or by the law of the land. It was of vital importance in the seventeenth century as a powerful instrument in the hands of the popular leaders of the House of Commons when waging the battle of constitutional freedom against the Stuart dynasty. **Reference:** W. S. McKechnie, *Magna Charta* (1805). E. P.

MAGNETIC STATESMAN. A sobriquet given to James G. Blaine (*see*) in recognition of his attractive and engaging presence, and his personal magnetism. The term magnetic was perhaps first used in a characterization of Blaine by Thaddeus Stevens (*see*), January 5, 1865. O. C. H.

MAHAN, ALFRED THAYER. Alfred Thayer Mahan (1840–) was born at West Point, N. Y., September 27, 1840. In 1859 he graduated from the United States Naval Academy at Annapolis, and in 1861 was commissioned lieutenant. He was stationed at the Naval Academy in 1862–63, but during the rest of the Civil War was in active service. In 1872 he became commander, and in 1885 captain. He was president of the Naval War College at Newport, R. I., from 1886 to 1889, and again in 1892–93. In 1896 he was made rear-admiral, and retired at his own request; but he served as a member of the naval war board in 1898, during the war with Spain. In 1899 he was a delegate to the peace conference at The Hague. His numerous books on naval history have done much to revolutionize the study of naval operations, and to mould public opinion and government action, in this country and abroad, on questions of naval policy. His best known writings are: *Influence of Sea Power on History* (1890); *The Interest of the United States in Sea Power* (1897); *Lessons of the Spanish War* (1899); *Sea Power in its Relations to the War of 1812* (1905). **See** Officers, Military and Naval; Sea Power. **References:** J. D. Long, *New Am. Navy* (1903); F. W. Holls, *Peace Conference at The Hague* (1899); J. H. Latané, *Am. as a World Power* (1907). W. MacD.

MAIL MATTER, CLASSIFICATION AND RATES. For purposes of determining charges and conditions of service, all mail matter is divided into four pay classes and two free classes. The pay classes are known as first class, second class, third class and fourth class.

The first class includes official postal cards and private mailing cards (officially known as "post cards"), the rate for which is one cent each, and letters and other sealed matter the rate for which is two cents for each ounce or fraction. "Drop letters" at rural post offices not involving free delivery may be mailed at one cent each.

The second class includes newspapers and periodicals. Here the charge varies according to the conditions under which the matter is mailed: if mailed by the publishers in bulk, the rate is one cent per pound; if mailed singly, one cent for each four ounces or fraction; if mailed for delivery within the county, the service is free.

The third class includes all other printed matter, and the rate is one cent for each two ounces.

The fourth class includes all mailable matter not included in the other three classes, and the rate is one cent for each two ounces.

The two free classes consist of "penalty mail," *i. e.*, mail carried for the government; and franked mail, *i. e.*, mail carried for members of Congress.

The classification of mail matter, and the determination of the rates that shall be paid, constitute one of the problems of postal administration that is always present. Rate schedules satisfactory when established may easily become unsatisfactory on account of changes in economic conditions or the character of the service rendered. At the present time interest in respect to this matter centers around three special points: (1) simplification of the present extremely complicated system of classification and rates; (2) reduction of the rate on first class matter to one cent for each ounce; (3) readjustment of rates and conditions of service for second class matter. Of these, action in respect to the last is deemed to be most urgent.

See Parcel Post; Postal System of the United States; Registration of Mail; Second-Class Mail Matter.

References: *U. S. Official Postal Guide* (annual); Commission on Second Class Mail Matter, "Report" in *House Docs.*, 62 Cong., 2 Sess., No. 559 (1912).

W. F. Willoughby.

MAIL SUBSIDIES. Ocean mail subsidies date, in the United States, from the law of March 3, 1845, which offered discriminatory terms to American shipowners. In 1847 a law followed which resulted, in 1850, in a contract with the Bremen line and another with the Collins Company to carry the mails between New York and Liverpool for a subsidy of $385,000 per annum, increased (1852–1856), to $858,000. In 1858 all contracts for carrying foreign mail were abrogated.

The subsidy policy was revived in 1864 with an act granting a subsidy of $150,000 per annum for carrying the mails from New York to Rio Janeiro. This was discontinued in 1875. Under the act of February 17, 1865, a subsidy of $500,000 was granted the Pacific Mail Steamship Company for monthly mail service to Japan and China. In 1872 a contract doubling the service and subsidy was obtained through bribery, which, when discovered, caused the abrogation of the second contract, and later, in 1877, of the first.

Revived interest in mail subsidies resulted in the Postal Aid Law of March 3, 1891, now in force (1913). It authorizes five to ten years' contracts with American citizens to carry the mails in American built, owned, and, officered ships. Such ships are ranked in four classes; those of 20, 16, 14, and 12 knots an hour respectively. The maximum compensation of the four classes is $4, $2, $1, and $.66⅔ per mile. December 1, 1911, seven contracts were in force, all of which were with vessels of the third and fourth classes except with four from New York to Southampton which were of the first class. The total cost of the service in 1911, was $1,074,945.29, $240,059.29 of which represents the excess paid under the contracts.

See POSTAL SYSTEM; SUBSIDIES TO SHIPPING.

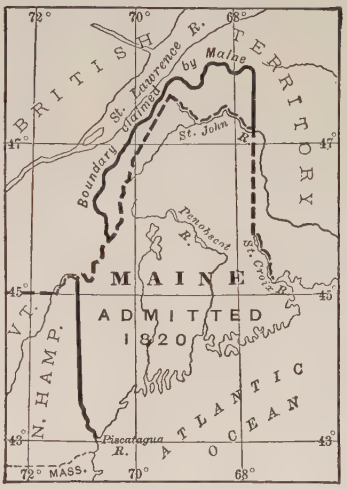
References: Post Master General, *Annual Reports;* Secretary of Commerce and Labor, *Annual Report* (1909), 393–442; W. T. Dunmore, *Ship Subsidies* (1907); J. R. Spear, *Story of the Am. Merchant Marine* (1910); R. Meeker, *History of Shipping Subsidies* (1905).

O.C.H.

MAINE. Early History.—A settlement known as the Popham Colony, was made at the mouth of the Kennebec river in 1607. It was abandoned, however, the next year. The first permanent settlement was made in 1623 at Saco. In 1677 Massachusetts acquired title by purchase, and thereafter, until Maine was admitted into the Union as a state in 1820, the general government was administered by Massachusetts. After 1785 there was continual agitation in favor of separation and in 1819, by popular vote, an act of separation was carried. A constitution was prepared by a convention and ratified by the people in town meetings. Congress, on March 3, 1820, passed the act declaring Maine to be one of the United States of America, admitted in all respects whatever on an equal footing with the original states.

Government.—Maine has had but one constitution and this has not been revised since its adoption. Ten amendments have been added. There is no lieutenant-governor. The president of the senate assumes the duties of governor in case of vacancy. There is a "council" "to advise the Governor." There are seven members in the council, chosen by the joint ballot of senators and representatives. The "declaration of rights" and the articles on electors, distribution of powers, and duties of officers do not differ essentially from similar articles in other constitutions. One article provides for a fully organized militia and another entitled "literature" authorizes the legislature to endow schools, academies and colleges.

Most of the functions of local government are performed by "the town." There are comparatively few cities in Maine and such as there are are outgrowths of towns, there being no necessary connection between the number of inhabitants and organization under a city charter. The "inhabitants" of towns are a corporate body and the annual town meeting, in which all qualified voters may participate, is one of the best examples of democracy. Aside from seventeen cities and three hundred and ninety-six towns there are seventy-eight "plantations" and one hundred and thirty-one "unorganized places" under the names of plantations, grants, surpluses, gores, tracts. The term plantation used by the earliest settlers in many of the colonies meant



BOUNDARIES OF THE STATE OF MAINE

originally "settlement" but long ago ceased to be used except in Maine where it still designates a political subdivision inferior to town. The other terms mentioned above are survivals of terms used in colonial times. The county in Maine serves certain judicial and executive purposes for the town and the state but is unimportant politically in comparison with either (*see* TOWN-COUNTY SYSTEM). The state officially devotes much attention to the development of "summer business." An elaborate system of laws has been enacted for the protection of fish and game. The general administration of these laws is committed to a commissioner of sea and shore fisheries and a "board of commissioners of inland fisheries and game."

Constitutional Prohibition.—Throughout the greater part of the history of Maine as a state the agitation of the "liquor question" has been a potent influence both politically and socially. From 1846 to the present time almost every legislature has enacted or discussed some measure relating to prohibition. In 1884 the principle of prohibition was put into a constitutional amendment. Since that time the legislature has been able only to discuss and enact methods for enforcement, or to pro-

pose a resubmission of the subject to the people. The Democrats have frequently used "resubmission" as a campaign slogan although many Republican believers in prohibition have favored resubmission believing that by such means prohibition would be again confirmed. In September, 1910, for the first time in over thirty years the Democratic party carried the state election, and the legislature of 1911 proposed the repeal of the amendment of 1884. This was voted upon in September of 1911 and the amendment was sustained by a small majority—758 (*see* LIQUOR LEGISLATION; PROHIBITION).

Amendment to Constitution.—Until 1880, according to the constitution a majority of votes was necessary for the election of governor. At the election in September, 1878, no candidate for governor received a majority of the popular vote, hence the governor was chosen by the legislature. The largest number of votes had been cast for the Republican candidate, the next largest for the candidate of the new Greenback party. The legislature elected the Democratic candidate who had received not many more than one-fifth of the people's votes. This led to the very peculiar situation in 1880 which caused an amendment to the constitution, and which is known in Maine history as the "count out" or "state steal." Again in 1879 no gubernatorial candidate received a majority. The Democratic governor elected by the legislature in the previous year was still in office and he and his council were to pass upon the certificates of election of the members of the legislature. By the governor and council a majority of Fusionists were certified to both the senate and house. A number of other persons presented themselves in each house who appeared upon the face of the returns to be elected. The two factions each attempted to organize as the rightful legislature. The state house was besieged and defended, and for a time it seemed likely that blood would be shed. A week after the constitutional day for meeting a legal organization was effected, and the Republican candidate for governor, who had received a plurality of the popular vote was elected by the legislature. In 1880 an amendment to the constitution provided that a plurality should elect a governor as well as other officers.

Schools.—In addition to local support, the common schools receive from the state the proceeds of a mill tax and the interest from a permanent school fund. The money is apportioned among the towns according to their population of school age. To encourage towns to engage competent superintendents a law provides that where two or more towns join in engaging a school superintendent the state will pay one-half the salary up to a specified amount. Many towns have availed themselves of this provision, greatly to the advantage of the schools.

Institutions.—The state institutions are: two hospitals for the insane; a state prison; two reform schools, one for boys and one for girls; a military and naval orphan asylum; a state university and six normal schools; a school for the deaf; and a school for the feeble minded. While the above are regular state institutions and must receive state support, they have not been as generously provided for as they deserve because of a large number of other institutions of a public nature, but under private management, which receive regular or frequent appropriations from the state treasury. Among these may be named hospitals, agricultural societies, and fairs, and various benevolent organizations, and many academies. The militia (*see*) is supported by a fractional mill tax and the towns are assisted in making good roads by receiving from the state one-half of the money annually expended up to a specified amount.

It will be observed that Maine still retains many of the details of government of colonial times. Some of these lead to inconvenience in view of more modern conditions, for, although the state is a part of New England, her territorial extent and physical conditions make her more like some of the newer western states.

Parties.—From 1856 to 1911, except for brief periods and 1880, the Republican party was in control of the state government. In 1912 the entire electoral vote was cast for the Democratic presidential candidate.

See CONSTITUTIONS, STATE; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: W. MacDonald, *Government of Maine* (1902); W. D. Williamson, *Hist. of the State of Maine* (1832); *Maine Register* (biennial); F. N. Thorpe, *Federal and State Constitutions* (1909), III, 1619–1668.

GEORGE E. FELLOWS.

"MAINE." February 15, 1898, the United States ship *Maine*, a second class battleship, was blown up at her moorings at Havana, Cuba, with a loss of life amounting to 266 of the 355 persons on board. A naval court of inquiry reported that the destruction of the ship was due to the explosion of her magazines, caused by that of a mine under her bottom. A Spanish board of investigation attributed the disaster to an internal explosion. When war followed, destruction of the *Maine* was among the causes held to justify intervention in Cuban affairs. The submerged portion of the wreck was surrounded by a coffer-dam and uncovered in December, 1911, when an examination of the structure by a board of officers of the Navy and Army of the United States confirmed the previous finding and fixed the point at which the external explosion took effect. The hull of the *Maine* was then towed to sea and sunk with appropriate ceremonies. See CUBA AND CUBAN DIPLOMACY; SPAIN, DIPLOMATIC RELATIONS

WITH; TELLER RESOLUTIONS; WARS OF THE UNITED STATES. **References:** J. D. Richardson, *Messages and Papers of the Presidents* (1899), X, 136–139, 148, 153, 155; C. D. Sigsbee, *Personal Narrative* (1899); U. S. Navy Department, *Appendix to Report of Bureau of Navigation* (1898), 11–18; *Sen. Docs.*, 55 Cong., 2 Sess., No. 207 (1898); *Sen. Reports*, 55 Cong., 2 Sess., No. 885 (1898); *House Docs.*, 62 Cong., 2 Sess., No. 310 (1911).

C. G. C.

MAINE LAW. The usual term applied to the prohibitory law of the state of Maine, first passed in 1851. This was the first state prohibition law. An amendment to the constitution in 1884 prohibited the manufacture and sale of intoxicating liquors except the sale for medicinal and mechanical purposes and the arts, and required the legislature to enact laws necessary for its enforcement. The sheriff and county attorney are chiefly responsible for the law's execution. While nullification of the law is prevalent in many large towns and cities, the repeal of the amendment was rejected in 1911 by a vote of 60,853 to 60,095. See LIQUOR LEGISLATION; PROHIBITION; **Reference:** W. MacDonald, *Government of Maine* (1902), 159–162, 240.

O. C. H.

MAINTENANCE OF ORDER. See ORDER, MAINTENANCE OF.

MAJORITIES, THEORY OF. Origins.—The simple doctrine that the will of the majority in an assembly or at a popular election should prevail is a relatively recent development in the history of political institutions. It was applied in its absolute and relative form in the late Roman assemblies, but it was only by slow process that it came to be generally accepted among Teutonic peoples—so tenaciously did they adhere to the principle of unanimous approval. The doctrine received its extreme form in the hands of the Rousseau and the French publicists. To Rousseau the will of the majority was the general will—*la volonté générale*—and the general will was always right and tended always to public good. The principle is also vaguely maintained in American political theory. Majority rule, even in democratic countries, is in practice, however, hedged about by many limitations. The principle of relative or absolute majority rule was accepted in the American colonies in elections and in assemblies; but the popular majorities in legislative assemblies were subject to royal veto and in the provincial colonies to the control of the governor's council. On the eve of the Americas Revolution, therefore, simple direct majority rule may be said to have existed only in Connecticut and Rhode Island where the entire government was elective. But even in these two provinces the veto power of the crown was always potential. During the Revolution, however, the doctrine of majority rule received a great impetus. The Declaration of Independence spoke of governments deriving their just powers from the consent of the governed, and the right of the people to alter, abolish, and institute new forms of government; but it apparently was nowhere conceded that a temporary and bare majority had the moral right to override minorities without consideration. Indeed, the Declaration of Independence particularly stated that governments long established should not be changed for light and transient causes. Nevertheless, under the Articles of Confederation (*see*) the electors of the several states were able to apply the simple majority principle with less effective control than at any other time in our history.

Under Federal Constitution.—It was under the influence of the experience acquired during the period of the Confederation that the framers of the Constitution elaborated their system of checks and balances, and judicial control, which was primarily designed as a counterweight to the direct rule of majorities in state legislatures and in Congress. The former were laid under several specific limitations by the Federal Constitution and these limitations are enforced against the acts of state legislatures (no matter by what majority they are passed). In Congress the majority principle is not applied throughout. The majority party in the House of Representatives by no means always represents a majority of the voters, owing to the practical workings of the system of district elections; and the House of Representatives is checked by the Senate for which states, not numbers, form the basis of representation. Under the system of electing the President, it is possible for a man who has received a minority of the popular vote to be elected. In the making of treaties two-thirds of the Senators present must concur. In our national nominating conventions (*see*) owing to the practice of apportioning the delegates among the states on the basis of congressional representation, not of party vote, the majority of delegates necessary to choice need not be representative of the majority of the members of the party. In the Democratic convention, the rule that the nominees must receive a two-thirds vote is regularly applied and the method of distributing delegates is thus partially offset.

The diversity in the terms of the members of the House, the Senators, and the President, and the independent position of the judiciary prevent even a large majority of the voters at any single election from securing control of all branches of the government. The method provided for amending the Federal Constitution, requiring the ratification of three-fourths of the states, makes it possible for an insignificant minority to block the will of an undoubted majority. Even when a party has, in the course of time secured the executive and

legislative branches of the Federal Government it has to reckon with the Supreme Court. In the power of the judiciary to declare acts of Congress invalid lies the chief safeguard of the rights of minorities against majorities.

In the States.—In the state governments may be observed in some respects a trend away from the direct majority rule which obtained in the early legislatures. Although in general the principle of majority rule has been extended by increasing the number of elective offices and the transformation of an appointive judiciary into an elective judiciary, the more equitable apportionment of representation and the adoption of the initiative and referendum, the rights of minorities, however, are still safeguarded. The governor is given the veto power which in many cases can be overcome only by an extraordinary majority in the legislature. The legislative power is further curtailed by extensive constitutional limitations. Furthermore, the state legislatures are subject to judicial control under the Constitution of the United States.

General Principles.—In reviewing the political institutions of the United States it is apparent that the doctrine of majority rule is by no means universally accepted. Indeed, the constitution of Kentucky (1890) embodies the declaration that "Absolute and arbitrary power over the lives and liberty and property of freemen nowhere exists in a republic even in the largest majority." Many leading American statesmen have taken the ground that there are inherent personal and property rights which are above and beyond the reach of the government. Rufus Choate declared in the constitutional convention of Massachusetts in 1853, that:

> Our political system, while it is purely and intensely republican, within all theories aims to accomplish a two-fold object, to wit, liberty and security. To accomplish this two-fold object we have established a two-fold set of institutions and instrumentalities—some of them designed to develop and give utterance to one; some of them designed to provide permanently and constantly for the other; some of them designed to bring out the popular will in its utmost intensity of utterance; some of them designed to secure life and liberty and character and happiness and property and equal and exact justice against all will and all power.

This doctrine received judicial sanction at the hands of the Supreme Court of the United States in the case of Loan Association *vs.* Topeka (20 *Wall.* 655) in which Mr. Justice Miller said:

> It must be conceded that there are some rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority if you choose to call it so, but it is none the less a despotism. It may well be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to his happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many. The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere.

Stated in its baldest form this is an anarchical theory because it declares that in certain fundamental matters the individual is to be protected absolutely against all state interference, no matter how great the majority behind it. A sounder view would hold that while the great rights of individuals should not be put at the mercy of small and temporary majorities, no rights are so sacred as to require protection against the deliberately ascertained and mature will of an undoubted majority. The practical problem is to determine how and under what circumstances this deliberate will is to be ascertained. Many astute statesmen believe that it is best to leave the question to an independent judiciary removed from direct partisan control and not attempt to settle it by too definite constitutional provisions. Under this judicial control, our leading publicists and authorities contend, majorities are more effectively controlled than in any country in the world. Only where the extreme form of initiative (*see*), referendum (*see*), and recall (*see*), is adopted do we find the government of a commonwealth for practical purposes in the hands of a simple majority at the polls; and the Oregon practice of permitting a majority of those voting on a particular referendum to decide really vests the government in the hands of a plurality. Nevertheless, it must be remembered, the commonwealths which have adopted these newer institutional devices of democracy are subject to the control of the federal judiciary.

See Bills of Rights; Checks and Balances; Liberty, Civil; Minorities, Rights of.

References: *The Federalist*, No. 10; C. A. Beard, *Am. Gov. and Politics* (1910), ch. viii; T. M. Cooley, *Principles of Constitutional Law* (7th ed., 1903); E. Boutmy, *Studies in Const. Law* (English trans., 1891).

Charles A. Beard.

MAN OF DESTINY. A title bestowed upon Grover Cleveland (*see*), then governor of New York, at a banquet in the spring of 1883, by Congressman Farquhar who introduced Cleveland as the "man of destiny" in consideration of his rapid rise and future prospects; given currency by the newspaper press, especially during the campaign of 1884. O. C. H.

MAN OF THE REVOLUTION. An affectionate nickname bestowed by the American people upon Samuel Adams (*see*) because of the leading part which he played in bringing about the War of Independence. O. C. H.

MANDAMUS. "A command issuing from a common law court of competent jurisdiction,

in the name of the state or sovereign, directed to some corporation, officer or inferior court, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law." Reference: J. L. High, *Extraordinary Legal Remedies* (3d ed., 1896), § 1. H. M. B.

MANDATORY STATUTES. Those which imperatively require strict obedience. Acts done in violation or disregard of the provisions of such statutes are absolutely void. See DIRECTORY STATUTES. H. M. B.

MANIFEST DESTINY. This phrase is commonly understood to mean that it manifestly is the destiny of other parts of the two American continents, but particularly of North America, to be annexed to the United States. The phrase was in use as early as about 1845. See ANNEXATIONS TO THE UNITED STATES; FOREIGN POLICY OF THE UNITED STATES; LATIN AMERICA; MONROE DOCTRINE. A. B. H.

MANIFESTS OF VESSELS. The master of every vessel before clearing for a foreign port must deliver to the port collector under oath "a manifest of all the cargo on board the same, and the value thereof." The form is prescribed by the law of April 29, 1902, to contain a record of ports where cargo was laden, name of vessel and master, port of destination, whether packages or articles are in bulk, contents or quantities, and the value at the port of exportation of the vessel's entire cargo. Before sailing, the master must secure the *visé* of the consul of the country of destination. Vessels engaged in the coastwise trade are not required to deliver manifests, unless they clear from one coastwise district to another.

The individual shippers or consignors of cargo to foreign countries are also required to make out sworn shippers' manifests showing the value of the cargoes or part cargoes, and the kinds and quantities of articles shipped.

Inward vessel manifests are required on all merchandise imported into the United States from abroad, and must contain the name of the ports where the merchandise was laden, the name, description, tonnage, build and home port of the vessel, name of master and owners, description of the merchandise, names of consignees unless consigned to order, name and class of consignors, and an account of the sea-stores remaining on the vessel. They are signed by the master and contain the *visé* of the American consul located in the country in which the cargo was shipped.

See TARIFF ADMINISTRATION; VESSELS, ENTRY AND CLEARANCE OF.

References: U. S. Treasury Department, *Navigation Laws of U. S.* (1911); E. R. Johnson, *Ocean and Overland Water Transportation* (1905), ch. v. GROVER G. HUEBNER.

MANILA. The city of Manila, capital of the Philippine Islands, is situated on the Bay of Manila, 32 miles from the entrance, at the mouth of the Pasig River. The Spanish city was founded by Miguel Lopez de Legaspi on June 24, 1571, on the site of a native city, and became the capital of the Spanish possessions. Later it was surrounded by a strong wall and defended by Fort Santiago and other forts. In 1762 the city was taken by the British who held it until 1764. On August 13, 1898, the city was surrendered to the American forces. The population of the city in 1903 (census) was 219,928.

Government.—The present government of the city is based upon the act of the Philippine Commission of July 31, 1901, No. 183, as amended, notably by the act of the Philippine legislature of June 18, 1908, No. 1869. As the capital and largest city of the archipelago, it was not deemed expedient to establish there a government similar to the provincial municipalities. Instead, a form was provided which recognized the interdependence of the insular and municipal governments. The government of the city is entrusted to a municipal board composed of three members appointed by the governor-general, with the advice and consent of the commission, one ex-officio member (the city engineer), and two elected members. A seventh member may be appointed by the governor-general to break a tie. A president is designated by the governor-general, and each member gives a bond in the sum of 20,000 pesos. The municipal board meets every day, except Sundays and legal holidays, four members constituting a quorum.

The general powers of the municipal board include the authority to collect taxes and other revenues, control subordinates, make ordinances and regulations and fix penalties for their violation, provide for the peace, order, safety and general welfare of the city and its inhabitants, maintain a police force and police courts, enforce the regulations of the insular board of health, provide schools, issue municipal licenses, improve streets and other public places, maintain waterworks, establish and regulate markets and slaughter houses, etc. The administrative departments are those of law, fire, police, city schools, assessment and collections, engineering and public works, sanitation and transportation. The city is divided into thirteen districts for administrative purposes. The local courts include a municipal court, a justice of the peace, and three parts of the court of first instance. All appropriations for expenditure are made by the Philippine Commission, upon estimates submitted by the municipal board, which provides 30 per cent of the total amount from the insular treasury. Among the local revenues the real estate tax, market fees, water rents and municipal licenses are important items. In 1910 the total income from all sources was 4,824,394 pesos. The in-

sular treasurer and auditor serve in those capacities for the city, although there is a municipal disbursing officer, and the health and legal officers act under the direction of the insular officials.

See PHILIPPINE ANNEXATION; PHILIPPINE ISLANDS.

References: Philippine Commission, *Reports* (1902) to date; Acts of the Philippine Legislature. P. J. TREAT.

MANITOBA. Manitoba is the central province of Canada, a rectangular area extending between the 49th and 53rd parallels of north latitude, and the 95th and 101st parallels of west longitude. Its total area is 73,732 square miles, and its population (1913) is estimated to be about half a million. The territory from which Manitoba was created in 1870 formed part of the patrimony of the Hudson Bay Company. It had been originally granted by Charles II in 1670 to "The Governor and Company of Merchants Adventurers of England trading into Hudson Bay," but this company did not undertake to exploit the trade of the area until the closing years of the eighteenth century. Rival companies, moreover, entered the field and set forth counterclaims about this same time; but the Hudson Bay Company, by amalgamating them, managed to keep its monopoly. The Selkirk Company, which was its chief competitor, was bought out in 1835. In 1869, after prolonged negotiations, terms were agreed upon by which the Dominion Government bought all the territorial claims of the Hudson Bay Company, leaving the Company in control of its trading privileges. It was from the lands so acquired that the province of Manitoba was created and given a civil government in 1870. Various matters connected with the transfer of this territory from the company to the Dominion gave rise to discontent among the traders and the half-breed settlers of the Red River region, and the establishment of the new province was immediately followed by a rebellion under the leadership of Louis Riel. This, however, was quickly quelled.

Upon its establishment as a province, Manitoba at once became a member of the Canadian confederation. It has a representation in the federal parliament consisting of four senators and ten members of the House of Commons; but this quota is subject to change after each decennial census. The government of the province consists of a lieutenant-governor, nominated by the governor-general of Canada for a five-year term, a small executive council responsible to the assembly, and an elective assembly of forty members. On its admission to the union in 1870 the province had a two-chamber legislature; but the upper chamber was abolished in 1876. In 1911 the province had a population of 455,614 and its provincial capital at Winnipeg, which has a population (1913) estimated to be about 200,000, is the largest city of the Canadian West.

See CANADA, DOMINION OF; CANADIAN PROVINCES.

References: George Bryce, *Manitoba* (1882); Beckles Wilson, *The Great Company* (1900), *Life of Lord Strathcona* (1902); *Canadian Annual Review of Public Affairs* (Hopkins, Ed.). WILLIAM BENNETT MUNRO.

MANN, HORACE. Horace Mann was born at Franklin, Mass., May 4, 1796, and died August 2, 1859. After his graduation from Brown University, he studied law and was admitted to the bar in 1823. Four years later, he was elected to the Massachusetts legislature where he served until his appointment as secretary of the state board of education. During the period, 1837 to 1848, his great work for the public schools of his state was well organized and other states were adopting similar courses. These reforms had to do especially with the procuring of better school buildings, uniform text books, founding of normal schools, and establishing county teachers' conventions, and examinations for teachers' certificates. In 1848, he succeeded John Quincy Adams in the House of Representatives and continued a member of that body from 1848 until 1853. As an advocate for anti-slavery, he plead especially for the exclusion of slavery, from the territories. Failing to be elected governor of Massachusetts as the Free Soil candidate, he accepted toward the close of 1852 the presidency of Antioch College, Ohio, and for six years had a notable influence on the educational development of the old Northwest. See EDUCATION AS A FUNCTION OF THE GOVERNMENT; MASSACHUSETTS; SCHOOLS, PUBLIC, NORMAL. **References:** B. A. Hinsdale, *Horace Mann and the Common School Revival in the U. S.* (1898); M. T. P. Mann, *Life of Horace Mann* (1865). J. A. J.

MANUAL TRAINING. The term manual training is applied to the various forms of hand work given in elementary and secondary schools. In its broader signification it includes the work of both boys and girls, but a narrower sense in which it is sometimes used confines it to the work of boys, while that of girls is called domestic economy, or household arts. Its purpose is to cultivate the motor senses and thus to train to do as well as to think. "Put the whole boy to school," was the slogan of its earlier advocates in this country.

As early as 1858 Otto Cygnaeus organized a plan of manual training for the schools of Finland. Victor Dellavos, the director of the Imperial Technical School at Moscow, Russia, worked out a system of tool analysis, and his report, in 1868, gave impetus and direction to tool instruction. In 1872, Sweden provided for the establishment of schools for sloyd, which was designed to revive interest in the

old-time home industries. The exhibit of the Russian schools at the Centennial Exposition in Philadelphia in 1876 is usually credited with giving first impetus to hand training in the United States, though it had some advocates prior to that time.

In its earlier beginnings manual training was introduced in the high schools, but soon began to work its way down into the elementary grades. The first school strictly of this character in the country was the St. Louis Manual Training School; opened in 1880 as a subdepartment of Washington University, it served as a model in the establishment of similar institutions. Other schools of this grade and character were established in Baltimore, Chicago, and Toledo in 1884, in Philadelphia in 1885, and in Cleveland and Cincinnati in 1886. Toledo, in which city classes in cooking, sewing, and millinery were organized in 1885, was the pioneer in providing hand training for girls. By enactment of law in 1885, New Jersey was the first to provide state aid to schools giving manual instruction.

From these beginnings manual training has now spread to all parts of the country. For the first seven years of the past decade the United States Bureau of Education, which collected statistics for those years, reported the increase in number of cities in the country which gave manual and industrial training as follows: 232 in 1901; 644 in 1907. No comprehensive and reliable statistics on this subject have been published since the latter year. Only 26 of the cities reported in 1907 confined manual instruction to the high school.

As at present organized in this country, manual training comprises instruction by progressive steps throughout the public school course. For the first four grades some form of simple construction work is given both sexes. In the fifth and sixth grades advancement is made to cardboard construction, elementary bookbinding, thin wood cutting and the like for boys, and sewing for girls. The work in the seventh and eighth grades usually comprehends bench work involving the use of tools for boys, and sewing and cooking for girls. In the more elaborately organized manual training high schools are to be found freehand and mechanical drawing, turning, joinery, pattern-making, forging, machine work, and foundry work. Much of this instruction in recent years has taken a vocational turn.

See under EDUCATION, and SCHOOLS.

References: C. M. Woodward, "The Rise and Progress of Manual Training" in U. S. Com'n of Educ., *Annual Reports*, 1894, I, 877–915; C. H. Ham, *Mind and Hand* (1900); Louis Rouillion, *Economics of Manual Training* (1911); Nat. Educ. Assoc., *Addresses and Proceedings* (1889), 417–430; U. S. Com'n of Education, chapters on "Manual and Industrial Training" in *Annual Reports* (1896–1910).

KENDRIC C. BABCOCK.

MANUFACTURES, BUREAU OF. A Bureau of Manufactures was created by act of Congress of February 14, 1903, establishing the Department of Commerce and Labor (*see* COMMERCE AND LABOR, DEPARTMENT OF). Its purpose was to gather and disseminate information concerning markets, domestic and foreign, for American manufacturers. The Bureau carried on its work by confidential correspondence with persons interested in foreign markets, by the preparation and distribution of the daily *Consular and Trade Reports*, and by *Confidential Circulars* on special topics. Investigations into foreign commercial conditions were made by consular officers and special agents of the Bureau to furnish information in the form of special monographs to domestic manufacturers and orally to committees of Congress, especially that on ways and means. The Bureau also translated and published the customs tariffs of foreign countries, compiled the duties charged in various foreign countries on specific classes of commodities, and notified American manufacturers of forthcoming international expositions at which American products should be exhibited; and, in general, facilitated successful competition in American foreign markets by manufacturers of the United States. In 1912 the Bureau of Manufactures was consolidated with the Bureau of Statistics to form the Bureau of Foreign and Domestic Commerce which carries on the functions of both bureaus. See COMMERCE, DEPARTMENT OF; COMMERCE, MOVEMENT OF; LABOR, RELATION OF THE STATE TO; TARIFF. Reference: Department of Commerce and Labor, *Annual Reports*. A. N. H.

MANUFACTURING, RELATION OF GOVERNMENT TO. Principle.—Tariff and internal revenue laws and those to protect patents (*see*) were among the first to be enacted by the Federal Government. With the development of industry and the establishment of the factory system other regulative measures, not designed for revenue, were found necessary. These came in the form of factory inspection laws; laws regulating the manufacture and inspection of food products, and the commerce between states in certain manufactured products. This class of legislation has been gradually extended by the federal and state governments, as well as by the laws and regulations governing the minor civil divisions, until there are but few industrial problems which are not directly or indirectly affected by legal requirements.

The necessity of government interference in many branches of industry has apparently become established as a principle. At the same time the laws have developed along well-defined lines, and while contrary to the doctrine of *laissez faire*, they do not rest upon the assumption that the government is in *loci parentis* to the subjects. They are not entirely contrary to the theory that society will realize

the best results from the unregulated freedom of individual action, but they do violate the principle that every individual is the best judge of his own needs and interests.

The employment of large numbers of both sexes and all ages in the same rooms in connection with rapidly revolving and complicated machinery made factory inspection imperative. The manufacture of a great variety of new food products, the development of methods of preserving such products, and the unsanitary conditions incident to the unrestrained manufacture on a large scale, made the food inspection laws necessary to the health of the nation (*see* LABOR, PROTECTION TO; INSPECTION AS A FUNCTION OF GOVERNMENT).

Source of the Authority.—While the sphere of operation of the federal, state and minor governments is well defined, the laws of two or more of them often affect the same enterprises, and manufacturers frequently have to comply with the requirements of laws of different governments.

The most important laws of this class enacted by the Federal Government are: the tariff and internal revenue laws; laws for the inspection of food and drugs and the regulation of their manufacture; for the regulation of interstate commerce; for the collection of income tax from corporations; for the inspection of steam vessels; regulating factory inspection and conditions of employment in the territories, the District of Columbia and the Insular possessions; also the postal regulations (*see* REVENUE, INTERNAL; TARIFF; TARIFF POLICY OF THE UNITED STATES).

From the inception of our government the tariff has been recognized as exercising two distinct functions, to raise revenue and to protect home manufactures. There have been 34 distinct acts of this character up to and including the act approved August 5, 1909. By establishing the tariff board (*see*) and the court of customs appeals (*see*) this law inaugurated a system of collecting information which provided a basis for more satisfactory regulation. This law also imposes a tax on the net income of every corporation, joint stock company or association organized for profit, and necessarily leads to a close inspection of many manufacturing enterprises (*see* CORPORATIONS, TAXES ON).

Taxation of production usually carries some regulation of the industry. This is especially true of the internal revenue laws which impose a tax on the manufacture of distilled and fermented liquors, stills or worms, oleomargarine, process or renovated butter, adulterated butter, filled cheese, tobacco, cigars, cigarettes, snuff, mixed flour, and playing cards.

The Food and Drugs Act of June 30, 1906, makes it unlawful to manufacture within any territory, including the insular possessions, or the District of Columbia, any article of food or drug which is adulterated or misbranded, or to ship the same from one state to another. In practical operation the law has much more potent influence over many branches of manufacture than the factory inspection laws (*see* CHEMISTRY, BUREAU OF; DRUGS, PUBLIC REGULATION OF; PURE FOOD).

One of the chief causes for the Constitution was the need for a uniform system of regulating commerce among the several states. Through these laws Congress has indirectly power to regulate manufacture by denying the facilities of interstate transportation to commodities not manufactured under conditions prescribed by it (*see* INTERSTATE COMMERCE; TRUSTS).

The act approved February 14, 1903, and the revised statutes governing steamboat inspection, contain various provisions controlling the manufacture of vessels and the machinery for their operation (*see* STEAMBOAT INSPECTION).

The Federal Government is the sole authority for legislation affecting patents. The organic patent act of April 10, 1790, was followed by the act of February 21, 1793, which defined patents and gave the inventor the full and exclusive right and liberty of making, constructing, using and vending to others to be used, his inventions and discoveries. Since then numerous laws have been enacted and the elaborate system regulating applications for, and the granting of, patents evolved (*see* PATENTS).

All of the states now have laws for the inspection of factories and the regulation of conditions of employment. This class of legislation is the prerogative of each state and there is a great variety of laws touching almost every condition of employment. Many of the states have food inspection laws similar to the federal statute (*see* LABOR, PROTECTION TO).

The police and other regulations of many cities contain provisions affecting manufacturers.

See BUSINESS, GOVERNMENT RESTRICTION OF; INDUSTRY, RELATION OF THE STATE TO; LABOR, RELATION OF THE STATE TO.

References: H. C. Adams, "Relation of State to Industrial Action" in Am. Econ. Assoc. *Monographs*, No. 6 (1887); S. McC. Lindsay, "Reciprocal Legislation" in *Pol. Sci. Quart.*, Sept., 1910, 435–457; A. T. Hadley, "Government Administration of Industrial Enterprise" in *Yale Review*, Feb., 1896, 398–408; W. Stanley Jevons, *State in Relation to Labour* (1894); T. H. Calvert, *Regulation of Commerce under the Federal Constitution* (1907); Leonard Hand, "Commodities Clause of the Fifth Amendment," in *Harvard Law Review*, XXII (1908–9), 250–265; Albert Stickney, *State Control of Trade and Commerce* (1897); E. H. Downey, *History of Labor Legislation in Iowa* (1910); James B. Cahoon, "State Control of Corporations" in *Municipal Affairs*, IV, No.

3 (Sept. 1900), 520–525; Percy Ashley, "Municipal Policy and State Control" in *Economic Journal*, XIII (March, 1903), 112–120; W. A. Anderson, "Increase of Federal Power under the Commerce Clause of the Federal Constitution" in Am. Pol. Sci. Assoc., *Proceedings*, V (1908), 74–82; Sarah S. Whittlesey, "Tendencies of Factory Legislation and Inspection in the United States" in Am. Acad. of Polit. and Soc. Sci., *Annals*, XX (July, 1902), 235–253; Jeremiah W. Jenks, "The Principles of Government Control of Business" in Am. Econ. Assoc., *Quart.*, IX, No. 1 (1908), 1–20; J. L. Bishop, *Hist. of Am. Manufacturers from 1608–1860* (1861–64); E. B. Bogart, *Economic Hist. of the U. S.* (1908); K. Coman, *Industrial Hist. of the U. S.* (rev. ed., 1910); *Am. Year Book, 1910, 1911, 1912*. W. M. Steuart.

MARBURY vs. MADISON. The case of Marbury *vs.* Madison (1803) is one of the great leading cases in constitutional law (1 *Cranch* 137). It was the first of John Marshall's constitutional decisions and is significant because the Supreme Court of the United States here exercised clearly the right to declare a law of Congress unconstitutional and because the principles upon which the court claimed the right were definitely set forth. February 27, 1801, Congress passed an act providing for justices of the peace for the District of Columbia. To one of these positions President Adams appointed William Marbury, and the appointment was confirmed. The commission, however, though signed, was not delivered. Marbury applied to the Supreme Court for a mandamus directed to James Madison, Secretary of State, ordering him to deliver the commission. The Court, while declaring that the commission was wrongly withheld, refused to issue the mandamus, on the ground that it had no jurisdiction. The original jurisdiction of the Court was clearly limited by the Constitution, and when Congress, in the Judiciary Act of 1789, sought to bestow on the court the general power to issue a writ of mandamus to public officers it acted without authority.

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. Although, therefore, a mandamus may be directed to courts, yet to issue such a writ to an officer for the delivery of a paper, is in effect the same as to sustain an original action for that paper, and, therefore, seems not to belong to appellate, but to original jurisdiction.

That portion of the act purporting to give the general authority to the court to issue the writ to officers must, therefore, be considered void. The Constitution is the supreme law, any act of Congress repugnant to the Constitution is therefore void. "It is, emphatically, the province and duty of the judicial department," declared Marshall, "to say what the law is." In the course of its duty the court must refuse to recognize as law an act conflicting with the Constitution.

See Courts and Unconstitutional Legislation; Law, Constitutional, American.

References: E. Channing, *The Jeffersonian System* (1906), 117–120; J. P. Cotton, *The Constitutional Decisions of John Marshall* (1905), I, 3–43. A. C. McL.

MARCY, WILLIAM LEARNED. William L. Marcy (1786–1857) was born at Southbridge, Massachusetts, December 12, 1786. He was admitted to the bar at Troy, N. Y., and in 1816 was appointed recorder of that city, but was removed because of his opposition to DeWitt Clinton. He then became editor of the Troy *Budget*, which he made an influential organ of Van Buren and the "Bucktail" section of the Republicans; and when the "Albany regency" was formed he became a leading member of it. In 1821 he was appointed adjutant-general, in 1823 state comptroller, and in 1829 associate justice of the supreme court. In 1831 he was elected United States Senator, as a Democrat, and was at once made chairman of the committee on the judiciary. As Senator he made the celebrated declaration that "to the victor belongs the spoils of the fray." He resigned his seat in 1833, in response to the demand of the "Albany regency," to become governor of New York, which office he held until 1839, when he was defeated by William H. Seward. He was then appointed one of the commissioners on claims against Mexico. He was Secretary of War throughout Polk's administration, 1845–49, where he was accused, without sufficient cause, of impeding the operations of Taylor and Scott, who were Whigs; was a prominent candidate for the Democratic nomination in 1852, and was later Secretary of State under Pierce. He died at Ballston Spa, N. Y., July 4, 1857. See Democratic Party; State, Department of. References: DeA. S. Alexander, *Pol. Hist. of the State of N. Y.* (1906), II, III; J. D. Hammond, *Life and Times of Silas Wright* (1848); J. K. Polk, *Diary* (1910). W. MacD.

MARE CLAUSUM. That Neptune had received from Jupiter dominion over the sea according to early fable seemed sufficient warrant for later rulers of the land to claim the inheritance by succession. The idea that the dominion of the sea belonged to some earthly ruler found sanction in the early writings of many nations. The Romans often asserted command of the seas as of right. The Venetians claimed the Adriatic, and their claim was for many years acknowledged in the titles, "Mistress of the Sea," "Queen of the Adriatic," which were much more than figurative. Lawyers of Venice maintained that this claim was good on the ground of "long prescription of possession" and of the marriage ceremony annually celebrated by the Duke with the

casting of a ring into the waters and the formula, "We take thee to our wedded wife, O Sea, in token of a true and perpetual dominion."

The papal claim to dominion of the sea was widely recognized. In the middle ages nearly every state having any maritime power laid claim to exclusive dominion in some maritime area and compelled obedience to their will within that area.

The discovery of the route around the Cape of Good Hope and of the New World led to attempts on the part of Portugal and Spain to exclude all others from the neighboring seas. Elizabeth of England declared this contrary to the law of nations and the Dutch maintained the same contention. Grotius, in his *Mare Liberum* of 1609, supported the Dutch contention citing the Roman law and maintaining that the seas were naturally, like the air, for common use.

James I of England affirmed strongly the claims of Great Britain over the neighboring seas and was supported by his people, but the doctrine was best stated in *Mare Clausum*, a book issued by John Selden in 1635, in two parts. In the first, according to the title page, "the sea is proved by the law of nature and nations, not to be common to all men, but to be susceptible of private dominion and propriety as well as the land." In the second part, it is asserted that "the most serene King of Great Britain is the lord and proprietor of the circumfluent and surrounding sea, as an inseparable and perpetual appendix of the British Empire." This book was aimed to controvert the position taken by Grotius in 1609.

The controversy continued for many years always with an increasing tendency to admit the freedom of the sea though the claim to *Mare Clausum* reappeared from time to time. The United States virtually advanced it in the Bering Sea Arbitration of 1893 (*see*) but that position was not sustained by the tribunal. It may be said that while the claim to exclusive jurisdiction over the sea is sometimes made, it has not met with support in recent years; and triumph of the principle of *Mare Liberum* supported by Grotius over the doctrine of *Mare Clausum* is another tribute to his masterly genius.

See HIGH SEAS; THREE-MILE LIMIT; WATER BOUNDARIES.

References: H. Grotius, *Mare Liberum* (1609); D. A. Azuni, *Maritime Law* (1806); J. M. Gould, *On Waters* (1900); J. Westlake, *Int. Law* (1904), Pt. I, 161 *et seq.*; R. Phillimore, *Int. Law* (1879–1888), I, §§ 172 *et seq.*; L. Oppenheim, *Int. Law* (1912), I, 315 *et seq.*

GEORGE G. WILSON.

MARINE CORPS. The Continental Congress authorized on November 10, 1775, two battalions of marines made up of seamen and those "able to serve with advantage at sea"—a rule which was not maintained when the Navy was reorganized in 1794. The corps has had a part in all the wars of the United States, and is still assigned to service ashore or afloat in all parts of the world. Detachments of marines were sent to Cuba, China, Nicaragua, and Santo Domingo in 1912, while regular garrisons served in the Philippines. During the Civil War its enlisted strength reached 6,000; but the reduction which took place after 1865 left it only 75 officers and 2,100 men up to 1897. After the war with Spain its force was doubled; and further increases have made the numbers 345 officers and 10,206 men. The present commandant of the corps is a major-general. Of the 55 field officers of the line and staff, 30 are graduates from the Naval Academy, the remainder including all officers appointed since 1899, are from civil life or from the ranks.

The law provides that the marines may serve in forts or garrisons ashore or on board vessels of the Navy at the discretion of the President, being subject to naval regulations except when assigned to service with the Army. An executive order of November 12, 1908, specified their duties as follows: to garrison naval stations and serve as the first line of defense for those abroad; to guard the Panama Canal and to furnish expeditionary forces in war. By this order they were withdrawn from cruising ships, where 2,700 were then serving afloat; but they have been restored to the fleet since 1909. There is a school for marine officers at Norfolk and an Advanced Base School at New London.

See ARMY, STANDING; ENLISTMENT, NAVAL AND MILITARY; NAVAL VESSELS; NAVY YARDS.

References: R. S. Collum, *Hist. of the U. S. Marine Corps* (1903), 20, 96, 167, 350, 373, 422; W. Pulsifer, *Navy Yearbook, 1912*, 644, 812, and year by year; U. S. Navy Department, *Laws Relating to the Navy* (1898), 140–158, 490–492, *Annual Reports*, 1912, 579–591, *Navy Regulations*, 1909, 347, 358, 367, *Navy Register*, 1911, 184–197, 280–283; Naval Committee, 61 Cong., 1 Sess., *Hearings on Status of Marine Corps* (1903), 5, 177, 185, 247, 307, 352.

C. G. CALKINS.

MARINE HOSPITALS. Institutions kept up by the Federal Government for the sailors, not only of the Navy, but of the merchant marine, who pay a few cents a month, deducted from their wages as a kind of insurance. See HEALTH, PUBLIC REGULATION OF; PUBLIC HEALTH SERVICE.

A. B. H.

MARINE LEAGUE. See JURISDICTION OVER WATERS; THREE-MILE LIMIT.

MARITIME LAW. See ADMIRALTY AND MARITIME JURISDICTION; COURTS, FEDERAL, JURISDICTION OF.

MARITIME WAR. Modernization.—The use of steam, the evolution of specially designed and costly vessels of war, and the building of great navies have so changed the conditions under which maritime warfare is conducted as to render obsolete much of the older law upon the subject. The convention of the Hague Peace Conference of 1907, which sought to establish an international court of prize, drew attention to the necessity for the formulation of rules applicable to modern conditions. The conference held in 1908–09 at London, participated in by representatives of the principal maritime powers, including the United States, drew up the so-called Declaration of London, which although not yet ratified by all the powers signatory to it, is the most authoritative code of rules for the conduct of naval war. In the chapters of this Declaration are to be found the most recent agreements upon such important topics of maritime war as belligerent blockade, contraband of war, unneutral service, and the destruction of neutral prizes.

Neutrality.—The adoption of modern notions of neutrality has tended to limit the theater of war both on land and sea. Maritime warfare is to be carried on only in the waters of the belligerents, or upon the high seas beyond the marginal waters of any neutral state. The waters of a neutral state, like the rest of its territory, are not to be used by either belligerent as the base or scene of warfare. After the outbreak of war a neutral state may forbid the entry of the ships of the belligerent into its ports unless they are forced there by stress of weather or unseaworthiness. The modern tendency is to restrict the privileges of belligerent vessels in neutral ports and by a Convention of the Hague Conference of 1907, a belligerent vessel not leaving a neutral port, where it has sought refuge from its enemy, may be interned and its officers and crew detained by the neutral state. Ordinarily a belligerent ship is not permitted to remain in a neutral port for more than 24 hours and to take on only enough coal to reach the nearest port of its own country.

Privateering.—With the development of modern naval strategy, demanding a special type of vessel and a trained naval force, there is ordinarily no difficulty in distinguishing between combatants and non-combatants. Privateering was formally abolished in 1856 by the Declaration of Paris, but with the advent of heavy naval armaments it would doubtless have become obsolete without such action. In the war of 1870 protest was made by France against the proposed formation by Prussia of a volunteer navy as contrary to the Declaration of Paris. Russia later organized a volunteer fleet composed of merchant-vessels subsidized by the Government and to be controlled by it during war. Great Britain and the United States have pursued a similar policy in the maintenance of so-called auxiliary navies. The methods of converting merchantmen into war-vessels gave rise to much discussion at the Hague and London Conferences. The right claimed by Russia in 1904 to make such conversion upon the high seas was seriously contested by neutral powers and no agreement upon the matter was reached at the London Conference. While enemy merchant vessels are subject to capture (small craft engaged in coast-fisheries excepted), resistance is permissible and if unsuccessful the captured officers and crew are held as prisoners of war. Unlike captured war vessels, which may be destroyed at once, enemy merchantmen must be taken to a belligerent port there to be adjudicated as prize. A neutral ship taken as prize can be destroyed only when the safety of the capturing ship, or the success of the operations in which she is then engaged is seriously jeopardized by attempting to take the prize into port.

Cargoes.—Various rules have been observed as to the liability of cargoes to capture. According to the Consolato del Mar, dating from the 13th century or earlier, the test was ownership. If the cargo was owned by an enemy it was capturable, if not it was free even if on board an enemy ship. Early decisions of the United States Supreme Court followed the rule of the Consolato. In its treaty arrangements the policy of the United States has not been uniform. At various times the United States has favored the complete immunity of private property at sea (contraband of war always excepted) and this principle finds expression in the treaty with Italy of 1871.

Code.—No complete code exists for the prosecution of maritime warfare comparable to those of the Hague Conferences for the conduct of war upon land. In practice similar rules obtain as to strategem, the use of the flag of truce, and cartels. The Hague Conference of 1907 forbade the naval bombardment of unfortified places. The use of torpedoes and mines is permitted and although the Hague Conference attempted to limit it, the convention upon the subject has been criticized as at present impossible of execution.

See ARMED NEUTRALITY; BLOCKADE PROCLAMATION; BLOCKADE RUNNERS; EMBARGO; FRENCH SPOLIATION CLAIMS; GENEVA ARBITRATION; NEUTRAL TRADE; ORDERS IN COUNCIL; RIGHT OF VISIT; WAR, INTERNATIONAL RELATIONS OF.

References: C. H. Stockton, *Laws and Usages of War at Sea* (1900); L. A. Atherley-Jones, *Commerce in War* (1907); T. G. Bowles, *Sea Law and Sea Power* (1910); C. Dupuis, *Droit de la guerre maritime* (1899); L. Perels, *Internationales Offentliches Seerecht der Cegenwart* (1882, 1903); L. Gessner, *Reform des Kriegseerechts* (1875); E. Cauchy, *Droit et devoirs des nations neutres en temps de guerre maritime* (2d ed., 1858).

J. S. REEVES.

MARKETS, PUBLIC. Municipally owned markets are not uncommon in the United States and are very general in European countries. The courts have held that municipalities, under their general authority to make by-laws for the general welfare of the public, may pass ordinances regulating markets, and also have held that a city has the right both by common law and charter to establish municipal markets (*see* Wartman *vs.* Philadelphia, and Pratt *vs.* Philadelphia, 22 *Penn.* 202, 1859). Recently some cities have established municipal markets in an attempt to lower prices and affect the cost of living, and in some cases such markets have not only lowered prices but have proved profitable. Baltimore markets, established in 1857, have averaged a net annual profit of $13,860 since their start. New Orleans leases city markets for $185,000 a year and operates four, giving a profit of $10,000 annually. Boston's markets net $60,000 annually. A special census report (1905) gives receipts and expenditures for 54 out of 158 cities in the United States with a population of 30,000 or over, showing a profit in twenty-five cities. Wholesale terminal markets are being advocated in the larger cities, New York, Philadelphia, etc. See COST OF LIVING; PURE FOOD. References: C. L. King, *A Study of Trolley, Light and Freight Service and Philadelphia Markets* (1912), Wisconsin State Board of Public Affairs, "Coöperation and Marketing" in *Report on Municipal Markets,* 1912, Pt. III. S. McC. L.

MARKETS, REGULATION OF. Besides the markets maintained at public expense, there are numerous so-called markets which are simply public places for the sale of commodities, designated by municipal authorities, such as hay markets, wood markets, vegetable and fruit markets, fish markets, meat markets and general markets for food products. In New York City, push carts come under the general principle of regulation and it is in contemplation to assign spaces where they can stand undisturbed, or to maintain a license system for all push cart peddlers. The right to regulate markets is within the police power of cities, which may adopt any regulations that are reasonable and necessary for the preservation of the public health. Such regulations must not be in restraint of trade nor create a monopoly of the right to sell though they may limit or prohibit altogether the sale of any particular articles.

Regulation of sales of goods outside of established markets within given areas or at particular hours, when reasonable with reference to the welfare of the community and not in restraint of trade, have been held valid. Push carts, in New York City, are subject to special regulation and police suspension.

Recent investigations into the cost of living have led to attempts at greater regulation of markets in the United States. Thus, Kansas, (1907), California, Delaware, Indiana, New Jersey, and New York (1911), began the regulation of cold storage products, subjecting such plants to the inspection of state boards of health, and requiring cold storage products to be marked and tagged with date of entry into storage and also date of withdrawal in Indiana and New York, limiting the time (6 to 10 months) of remaining in storage and imposing restrictions on retailers of storage products. Abroad, especially in English cities, market regulations are much stricter and more generally enforced, partly by reason of municipally owned and operated markets.

See BUSINESS, GOVERNMENT RESTRICTION OF; HEALTH, PUBLIC, REGULATION OF; INSPECTION AS A FUNCTION OF GOVERNMENT; MARKETS, PUBLIC; POLICE POWER.

References: F. N. Keen, *Markets, Fairs and Slaughter Houses* (1904); Massachusetts Commission on Cold Storage of Food, *Report,* 1912. S. McC. LINDSAY.

MARQUE AND REPRISAL. The Constitution of the United States grants Congress power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water" (Art. I, Sec. viii, ¶ 11). It also declares that no state shall grant letters of marque and reprisal (Art. I, Sec. x, ¶ 1). Letters of marque and reprisal are commissions, issued by a government, authorizing its citizens to seize property of the subjects of a foreign state. The term is now used of commissions authorizing capture of property at sea; in other words to grant these letters is to give authority to engage in privateering. See MARITIME WAR; PRIVATEERS; WAR, CARRYING ON; WAR, INTERNATIONAL RELATIONS IN. A. C. McL.

MARRIAGE AND DIVORCE

Marriage is probably the most important human institution with which the state has to deal. Legally it is both a contract and a status. The United States Supreme Court in Randall *vs.* Kreiger (90 *U. S.* 147) in 1874, says:

> Marriage is an institution founded upon mutual consent. That consent is a contract but is one *sui generis.* Its peculiarities are very marked. It supersedes all other contracts between the parties, and with certain exceptions it is inconsistent with the power to make any new ones. It may be entered into by persons under the age of lawful majority. It can neither be cancelled

nor altered at the will of the parties upon any new consideration. The public will and policy controls their will.

Lord Robertson says of the contract of marriage:

> It confers the status of legitimacy on children born in wedlock, with all the consequential rights, duties and privileges thence arising; gives rise to the relations of consanguinity and affinity; in short, it pervades the whole system of civil society. Unlike other contracts it can not in general, amongst civilized nations, be dissolved by mutual consent, and it subsists in full force, even although one of the parties should be forever rendered incapable, as in the case of incurable insanity, or the like, from performing his part of the mutual contract. No wonder that the rights, duties and obligations arising from so important a contract should not be left to the discretion or caprice of the contracting parties, but should be regulated in many important particulars by the laws of every civilized country.

Every modern state now emphasizes the legal and secular character of the rights and obligations of marriage, and provides state supervision of marriage. Although it may not require the performance of the ceremony itself to be a civil or state function, a license may be a prerequisite to the official ceremony, whether civil or religious. The transition from an exceptionally one-sided contract which prevailed in the régime of wife-capture in primitive society to the still somewhat one-sided contract of church usage, under different forms in different countries, and to the more nearly equal contractual relationship assumed by the modern state, is too complicated even to trace briefly here. This history is clearly set forth by Professor George E. Howard in his *History of Matrimonial Institutions.*

Illegal, Void and Voidable Marriages.—Marriages are illegal when they violate some condition or prohibition enacted by law. In the absence of statutory regulations, the courts have held at common law only that marriages of minors below the age of seven for males or females, and incestuous marriages are unlawful. The prohibited degrees which constitute incestuous marriage were derived by the common law from previous canon law and decisions of the ecclesiastical courts, which in England regarded marriages between relatives in the direct line and in the collateral line to the third degree, as prohibited, whether the relationship was by the whole or the half blood or by marriage or through legitimate or illegitimate birth. A common-law marriage has long been recognized by English and American courts, when not coming within the prohibited degrees, as valid without any ceremony or license and merely depending upon the public acknowledgment and recognition of the relationship of husband and wife. Not all unlawful marriages are, however, invalid. The desire on the part of the state to protect innocent parties and especially the rights of children, is so great that many apparent legal anomalies exist. Marriages are void, that is, have no legal effect, confer no marital property rights and impose no duties or obligations, when expressly so declared by statute and at common law when the parties are incompetent. Their issue is illegitimate. Such marriages may be attacked at any time by any person and a decree of annulment by a competent tribunal, though desirable, is not necessary. Parties are free to remarry in the same manner as if marriage had never taken place. The statutes in some states make certain marriages void only from the time of their annulment. Ordinarily, however, a void marriage when annulled is void from the time it was contracted. The most common cause which serves to void marriage is mental incapacity to contract marriage, that is, a person not capable of understanding the nature and obligations of marriage. Voidable marriages are those where consent was obtained by fraud or duress, or where the parties were not competent to contract. Children of voidable marriages, however, are legitimate and the survivor of a voidable marriage is entitled to dower or curtesy. The most common cause which renders marriages voidable is the physical incapacity or impotency of one of the parties. Marriages of parties above the age of seven but under the age of consent, which at common law was 14 for boys and 12 for girls, are voidable and subject to disaffirmance or ratification.* The terms void and voidable are not used uniformly with the same meaning in the statutes of the several states.

Marriage License.—The requirement of a license is the most effective means by which the modern state exercises civil control and supervision, and secures statistical records of marriage important in determining social policies and protecting the rights of property. The license, however, is not the authorization of the marriage. Some further ceremony, civil or religious, is contemplated, usually the declaration in the presence of witnesses that the parties take each other as husband and wife. Thirty-seven states, however, make legal the marriage ceremony of Quakers without being performed by or before an officiating person, although it is a ceremony in the presence of witnesses. The proposed Uniform Marriage and Marriage License Act, drafted by the Commissioners on Uniform State Laws and recommended to the several states in 1912, provides that marriage may be validly contracted only after a license has been issued, application for which must be made five days before the license is issued, unless, in cases of emergency or extraordinary circumstances, an exemption is granted by the judge of a court having probate jurisdiction. The license shall establish the identity of the parties and give, under oath, a statement relative to the legality of the contemplated marriage, and the date of same, the name, relationship, if any, age, nationality, color, residence and occupation of the parties, the names of the parents, guardians or curators of such as are under the

age of legal majority, any prior marriage or marriages of the parties or either of them, and the manner of the dissolution thereof. The licensing authority is not permitted to issue a license if parties are under the marriageable age of consent as established by law, or if between the age of consent and that of legal majority as established by law, without the consent of the parents, guardian or curator. Publication of the application for license is required and opportunity offered for the filing with a court of probate jurisdiction of a petition setting forth grounds of objection to the marriage. The proposed uniform statute represents the tendency in most states, all of which, except South Carolina, require a license. Some states have gone farther than the uniform statute and attempt through the license to regulate public health. Indiana (1905) and Washington (1909) have statutes prohibiting the issuing of licenses to persons without a clean bill of health. The Indiana statute requires the license to be uniform throughout the state and to be issued only upon information sworn to upon a form prescribed by the state board of health, which has power to revise and change this form. No license may be issued where either of the parties is an imbecile, epileptic, of unsound mind, or to any male who has been within five years an inmate of a county asylum or home for indigent persons, unless there is proof that the cause of such condition has been removed and the male applicant is able and likely to continue able to support a family, nor where either of the contracting parties is afflicted with a transmissible disease or, at the time of making application, is under the influence of an intoxicating liquor or narcotic drug. Such regulations are in the direction of a well marked public tendency, but they are extremely difficult to enforce. Private effort may be even more efficacious. The clergy in some jurisdictions refuse to marry persons who do not present a medical certificate. In view of the general prevalence of the religious ceremony, such a rule would accomplish probably more than a state law can do, until public opinion and the science of eugenics are further advanced.

The Uniform Statute provides that no marriage is rendered void by reason of want of authority or jurisdiction in the officiating person, if the marriage is in other respects lawful and consumated with the full belief on the part of the parties that they have been lawfully joined in marriage. It is not void either by reason of the license having been issued without the consent of the parents, guardian or curator of a minor, or by an official not having jurisdiction, or by reason of any omission, informality or irregularity of form in the application for the license, or in the license itself, or by reason of the incompetency of the witnesses, or after the lapse of the license usually issued for one year, if the marriage is in other respects lawful and is consumated with the full belief on the part of the persons so married that they were lawfully joined in marriage. With these exceptions, all marriages contracted in violation of the requirements of the uniform act, are declared to be null and void, provided, however that the parties to such void marriage may validate it by complying with the requirements of the act, in which case their children shall become legitimate. The chief results of the uniform statute would be to abolish common law marriages, which already have been declared void in twelve or thirteen states. Three states, Illinois, New York and Washington, declare marriages without a license void; two states, California and West Virginia, require both license and proper solemnization, otherwise the marriage is void; and in seven states, Kentucky, Maine, Maryland, Massachusetts, North Carolina, Oregon and Utah, a marriage is void unless there has been a proper solemnization as required by statute. In some states, Maine, Massachusetts and West Virginia, notably, marriages are voidable when residents of those states, intending to return, go into another state to evade the provisions of the marriage law.

Registration of Marriages.—On December 31, 1906, twenty-five states provided for state registration of marriage and made provision for a public authority under which the records are collected and preserved. This is usually the state board of health. Only a few states, however, have an effective system of state registration.

Divorce.—The annulment of a marriage, or a decree declaring a marriage void, differs from a divorce decree in that it does not recognize the relationship as having existed, whereas the divorce decree is a dissolution or partial suspension by law of the marriage relationship. The term divorce is wrongly applied to a sentence of nullity. Divorce in popular usage indicates absolute divorce, in which the bonds of matrimony are dissolved, and divorce *a mensa et thoro*, which is a legal separation or limited divorce. Practically all divorces in the United States are granted by civil courts, although in a few exceptions (Connecticut, Delaware prior to 1897) divorces are granted by the legislature. In England, the ecclesiastical courts practically were the only ones which had jurisdiction to grant limited divorce. An absolute divorce was very unusual prior to 1858, and only to be obtained by an act of Parliament. No courts of the United States have the jurisdiction of the English ecclesiastical courts, but only such jurisdiction as is conferred upon them by statute, and, therefore, the causes for divorce and the rules governing the incidents are prescribed in the statutes, while the rules governing procedure are generally those of common law. Forty-one states make provision in their constitutions on the

subject of divorce, 24 of them prohibiting the legislature from passing local or special laws granting divorces.

Increase of Divorce.—South Carolina alone makes no provision for divorce. An alarming increase of divorce in this country is revealed by the statistics of the Special Census Report on Marriage and Divorce, 1867–1906, which shows 945,625 divorces granted in the twenty years, 1887–1906, as compared with 328,716 in the previous twenty-year period, or a rate of divorce decade by decade, from 1870 to 1900, increasing two to three times faster than the population. The number of divorces per hundred thousand of the population has increased as follows: 1870—28, 1880—39, 1890—53, 1900—73. The latter rate, 73 per hundred thousand in 1900, may be compared with 32 in Switzerland, the European country having the highest rate, and 215 in Japan. The marriage rate during the same period in the United States has remained about stationary, being per ten thousand of the population in 1870—98, 1880—91, 1890—91, 1900—93. The lack of uniformity in the statutes of the several states has been supposed to contribute to the increased number of divorces, and it certainly has presented very great legal difficulties and uncertainties in the status of divorced persons. The following table shows the increase of divorces from 1887 to 1906:

request the governors of the other states to coöperate by sending delegates to a congress to meet in Washington for the purpose of discussing and adopting a draft of a general law to be reported to the legislatures of the several states. Forty-two states and territories were represented at the congress (Washington, February 19–22, 1906), which adopted resolutions as follows: first, that no federal divorce law was feasible and that efforts to secure a constitutional amendment for that purpose would be futile; second, recommending to the state legislatures regulations looking to greater uniformity in procedure and with respect to the causes upon which marriages would be annulled and either absolute or limited divorces granted. In November, an adjourned session was held at which a draft of a uniform divorce law was adopted. There is little hope, however, that this uniform statute will be adopted generally, because of the diversity in the various states in legal methods and in public opinion regarding the subject of divorce. It is also doubtful whether a uniform divorce law, desirable as it would be for other reasons, would help much to reduce the amount of divorce, the causes for which lie deeper in the economic and social life of the nation. The recommendations of the congress sought to reduce the number of causes for divorce legally recognized, and the causes enumerated are

MARRIAGES AND DIVORCES: NUMBER AND INCREASE, SPECIFYING DIVORCES GRANTED TO HUSBAND OR WIFE, 1887 TO 1906

(Special Report, 1908—1909, *Marriage and Divorce,* Bureau of the Census)

Calendar Year	Marriages		Divorces					
	Number	Increase Over Preceding Year	Total Number	Increase Over Preceding Year	Granted to Husband		Granted to Wife	
					Number	Per cent	Number	Per cent
1887	483,069	-------	27,919	2,384	9,729	34.8	18,190	65.2
1888	504,530	21,461	28,669	750	10,022	35.0	18,647	65.0
1889	531,457	26,927	31,735	3,066	11,126	35.1	20,609	64.9
1890	542,537	11,080	33,461	1,726	11,625	34.7	21,836	65.3
1891	562,412	19,875	35,540	2,079	12,478	35.1	23,062	64.9
1892	577,870	15,458	36,579	1,039	12,577	34.4	24,002	65.6
1893	578,673	803	37,468	889	12,590	33.6	24,878	66.4
1894	566,161	12,512[1]	37,568	100	12,551	33.4	25,017	66.6
1895	598,855	32,694	40,387	2,819	13,456	33.3	26,931	66.7
1896	613,873	15,018	42,937	2,550	14,448	33.6	28,489	66.4
1897	622,350	8,477	44,699	1,762	14,765	33.0	29,934	67.0
1898	625,655	3,305	47,849	3,150	15,988	33.4	31,861	66.6
1899	650,610	24,955	51,437	3,588	16,925	32.9	34,512	67.1
1900	685,284	34,674	55,751	4,314	18,620	33.4	37,131	66.6
1901	716,621	31,337	60,984	5,233	20,008	32.8	40,976	67.2
1902	746,733	30,112	61,480	496	20,056	32.6	41,424	67.4
1903	786,132	39,399	64,925	3,445	21,321	32.8	43,604	67.2
1904	781,145	4,987[1]	66,199	1,274	22,189	33.5	44,010	66.5
1905	804,787	23,642	67,976	1,777	22,220	32.7	45,756	67.3
1906	853,290	48,503	72,062	4,086	23,455	32.5	48,607	67.5

[1] Decrease.

For twenty years the Commissioners on Uniform Laws have tried to secure the adoption of a uniform divorce act. The act drafted by the commissioners has been adopted, however, by only three states. By act of March 16, 1905, the Governor of Pennsylvania was authorized by the legislature to appoint a commission to codify the laws relating to divorce, and to

now in the law in 40 states of the Union; for absolute divorce: adultery, bigamy, conviction and sentence for crime involving at least two years in prison, extreme cruelty, willful desertion for two years, habitual drunkenness for two years; for limited divorce: the same causes, except that extreme cruelty is more broadly defined, and an additional cause is in-

cluded—hopeless insanity of the husband. While it is not expected that public opinion at present will tend materially to decrease the causes recognized in most states, it is hoped that no state will extend its jurisdiction beyond cases where one of its own residents is a party.

See PUBLIC MORALS, CARE FOR.

References: G. E. Howard, *History of Matrimonial Institutions* (1904); "Marriage and Divorce, 1867–1906" in U. S. Bureau of the Census, *Special Reports* (1908–1909), Part I, Marriage Laws, Foreign Statistics, Part II, General Tables; J. P. Lichtenberger, "Marriage and Divorce, a Study in Social Causation" in Columbia Univ., *Studies in Hist., Econ., and Public Law*, XXXV (1909); Walter Wilcox, *The Divorce Problem, a Study in Statistics* (1897); Commissioners on Uniform Laws, *Proceedings* (published annually in the Reports of the American Bar Ass'n, and separately reprinted). S. McC. LINDSAY.

MARSHAL, FEDERAL. For each of the judicial districts of the United States (*see* COURTS, FEDERAL) a marshal is appointed, for a term of four years, by the President and Senate. In general the marshal's position corresponds to that of the sheriff (*see*). He is the executive officer of the national courts, executing all precepts and judgments directed to him. He collects sums due the United States and is the disbursing officer for the United States courts in his district. He apprehends offenders against national law, being permitted to swear in deputies and posses. He has the custody of witnesses, persons awaiting trial, and persons convicted in United States courts and held in county or state institutions within his district. Marshals are paid from $2,000 to $5,500 per year, and expenses. **Reference:** H. C. Gauss, *American Government* (1907), 542–553. R. L. A.

MARSHALL, JOHN. John Marshall (1755–1835), Chief Justice of the United States, was born in Fauquier county, Va., September 24, 1755. From 1775 to 1781 he served in the American army. In 1781 he was admitted to the bar, and rose rapidly to prominence. From 1782 to 1788 he sat in the Virginia assembly. In the Virginia convention of 1788 he was one of the strongest advocates of the Federal Constitution. In 1797 he was appointed one of the "X Y Z" (*see*) envoys to France. The next year he was offered a place on the Supreme Court bench, which he declined, and shortly entered the House of Representatives as a Federalist. In May, 1800, he resigned his seat to become Secretary of State. He was appointed Chief Justice January 31, 1801, and held the office until his death, July 6, 1835, at Philadelphia.

His long term of service was coincident with the adjudication, especially after 1814, of a large number of cases of the first magnitude, in the treatment of which he displayed legal knowledge, judicial temper, and expository power of the highest order, and through which he virtually created American constitutional law. In 1807 he presided at the trial of Aaron Burr for treason. He wrote a *Life of Washington* (1804–07), 5 vols. and atlas. See CASES, SIGNIFICANCE OF, IN INTERNATIONAL LAW; CONSTRUCTION AND INTERPRETATION; CONSTITUTIONS, GROWTH OF; COURTS, FEDERAL, JURISDICTION OF; LAW, CONSTITUTIONAL, AMERICAN; STATE, DEPARTMENT OF; SUPREME COURT OF THE UNITED STATES. **References:** J. F. Dillon, *John Marshall: Life, Character and Judicial Services* (1903); A. B. Magruder, *John Marshall* (rev. ed., 1898); J. B. Thayer, *John Marshall* (1901). W. MACD.

MARSIGLIO OF PADUA, POLITICAL THEORIES OF. See POLITICAL THEORIES, ANCIENT AND MEDIAEVAL.

MARTIAL LAW. The terms martial and military law, though generally regarded as identical in meaning, relate in fact to two widely separated systems of administrative control. Military law is always statutory in character, its purpose being to regulate the conduct of those persons—chiefly officers and enlisted men, who compose the military establishment of the state (*see* ARTICLES OF WAR). Martial law, or, as it is sometimes called, the law of military occupation, is a system of governmental control, originating in military necessity, which is established in the occupied territory of the enemy, or in a portion of the territory of a state which is in insurrection or rebellion against its sovereign authority; martial law is habitually executed by military commanders acting under the supreme authority of the belligerent government. Military law has no application to civilians, or to persons not directly connected with the army; martial law, on the other hand, is similarly inapplicable to military persons, save as to offenses committed by them in violation of the laws of war and in the occupied territory of the enemy.

Applied to Conquests.—Martial law or, properly speaking, the law of military occupation, becomes operative as to particular territory whenever it passes into the secure occupation of an enemy; it ceases to exist at the date of the treaty of peace or (in the case of acquisition of territory by conquest or purchase) when the legislative department of the acquiring government has made suitable provision for its government and administrative control. California and New Mexico were under the law of military occupation from the date of their acquisition from Mexico in 1846, until Congress made provision for their permanent government in 1850. Cuba, Porto Rico and the Philippine Islands were similarly administered under the law of mili-

tary occupation from the date of their acquisition until an independent republic had been founded in Cuba and suitable forms of government had been established in Porto Rico and the Philippine Islands in conformity to the will of Congress. The states which joined in the rebellion of 1861–1865 passed into the military occupation of the United States as the Union armies advanced and established themselves in secure possession of their territory. They continued to be governed by the law of military occupation until legislation restoring them to their constitutional relations had been enacted by Congress.

Applied to Insurgents.—Martial law is also resorted to where there is resistance to the operations of government by persons who set its authority at defiance by opposing the execution of the laws or by engaging in acts of insurrection or rebellion. In such a condition of emergency, where the President is unable, with the civil agencies placed at his disposal by law, to maintain the peace or to secure the execution of the laws, he is empowered by the Constitution (Art. II, Sec. ii, ¶ 1) to employ the land and naval forces, including the militia, with a view to "execute the laws of the Union, to suppress insurrections and repel invasion" (Art. I, Sec. viii, ¶ 15). It is not necessary, as is generally supposed, to precede such employment of military force by what is known as the "reading of the riot act;" although the President is required by law to issue a proclamation commanding "the insurgents to disperse and retire peaceably to their respective abodes within a limited time" (Rev. Stat. Sec. 5300).

Effect on Civil Law.—Military government or martial law is less stringently enforced in places which have passed into the secure occupation of the enemy. Much greater severity may be exercised in places and regions where actual hostilities exist, or are expected and must be provided against. Its most complete sway is allowed, even in the commander's own country away from the field of hostilities where the army is face to face with the enemy, because of the absolute necessities of the case and of the paramount duty to defend the country against invasion (Lieber, *Rules*, G. O. 100, A. G. O. 1863). Although it is the established practice to regard all persons and property within the occupied territory as coming within the operation of martial law, it is usual to provide that all civil and criminal law shall continue to take their usual course, unless interrupted or stopped by order of the occupying military power; but all the functions of government, legislative, executive and judicial, cease under martial law or continue only with the sanction or, if deemed necessary, the participation of the invader. When the local courts are continued in the exercise of their functions, the officers and men of the occupying forces are withdrawn from their jurisdiction. Special military tribunals are appointed for the trial of offenses committed by them which are not provided for in their own military law, and joint courts are established for the trial of controversies arising between the military and residents of occupied territory.

See CONQUEST, RIGHT OF; COURTS MARTIAL; DEPENDENCIES; WAR POWER, CONSTITUTIONAL.

References: W. E. Birkhimer (2d ed., 1904); C. M. Clode, *Military Forces of the Crown* (1869), II, chs. xvii, xviii; J. S. Risley, *Law and War* (1897); Percy Bordwell, *Law of War* (1908); J. W. Pomeroy, *Constitutional Law* (10th ed., 1888); G. B. Davis, *Military Law* (1906); J. I. C. Hare, *Constitutional Law* (1889), 910, 923–927, 930–968.

GEORGE B. DAVIS.

MARYLAND

Early History.—The state of Maryland took its name from Henrietta Maria (Terra Mariae), Queen of England, the wife of Charles I. The first settlement was a trading factory established by William Claiborne upon Kent Island on Aug. 17, 1631. George Calvert, first Lord Baltimore, who had been secretary of state under James I, had been interested in the London Company and had received a grant of the Province of Avalon, in Newfoundland, in 1623. The severity of the climate there induced him to seek for a more southern country, and he was about to receive a grant of Maryland, when he died and the charter was issued on June 20, 1632, to Cecil or Cecilius, his son, second Lord Baltimore. He became first Lord Proprietary of the Province with vice-regal rights over the territory, which was formed into a palatinate, modelled after the county of Durham. He was a shrewd, cautious, far-sighted man and established religious freedom as one of the foundation principles of his colony. The Lord Proprietary was a Roman Catholic and the religious needs of his coreligionists in the province were cared for by Jesuits. In Maryland, alone of the English speaking colonies, was there a strong indigenous Roman Catholic body of settlers, which fact caused the first bishopric of that church to be established in Baltimore and gave Marylanders a great influence in the moulding of the Roman Catholic Church in the United States. The first expedition sent out by the Proprietary, under the leadership of his brother, made a settlement on the north side of the Potomac River on March 25, 1634.

Considerable difficulty was found in reducing Claiborne's settlement and in establishing friendly relations with the Virginians, who resented the diminution in the size of their province. The English Civil War caused additional difficulties and, the proprietary government was overthrown in 1644 for a time. In 1649, a number of Protestant Nonconformists from Virginia were induced to settle in the province and religious freedom, which had been the

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policy of the province, was established by statute. During the Commonwealth period, an attempt of the governor to insist upon an oath of allegiance to the proprietary and the hostility of Claiborne led to warfare between the adherents of the proprietary and the Puritans, and resulted in the overthrow of the former party and the government of Maryland by popularly elected commissioners for some time, until Cromwell restored the province to Baltimore. Except when the proprietary was in the province, he was represented by a governor, who exercised the administrative power. The proprietary appointed most of the officers, except those of the customs, who were royal appointees, from which fact considerable friction arose. The charter granted the proprietary the right to make laws with the consent of the freemen, provided such laws did not conflict with those of England; but, after the first few years, he gave up his initiative. The legislature, after holding its first sessions as a primary assembly, became a bicameral representative body. The lower house was composed of four delegates from each county, the upper one was the governor's council and also the court of appeal and was appointed by the proprietary. The receipts from the sale of land and from quit rents furnished an important revenue to Lord Baltimore. Local government was carried on by the justices of the peace for each county, meeting in levy courts. There were no administrative subdivisions of the counties and, as the settlers scattered themselves in wide-spread plantations, the capital, St. Mary's, was the only incorporated municipality. In 1689, a revolution took place, and the leaders of the movement declared that Maryland was a royal province. King William accepted it as such, but left Lord Baltimore his lands and the revenue therefrom. Except for the substitution of king for proprietary, there was no change in the government.

The province was restored to the fourth Lord Baltimore in 1715, as a reward for his becoming a Protestant. During the royal period, the capital was fixed at Annapolis, the Anglican Church was established, and beginnings made of a system of education, by the establishment of the first school and of the first public library. A long controversy, concerning the bounds of the province finally resulted in the loss to the family of William Penn of the whole of the present state of Delaware and a large tract in Pennsylvania. The line between the possessions of the Penns and Baltimore was run by Charles Mason and Jeremiah Dixon in the years 1762 to 1767 (*see* MASON AND DIXON LINE). The southern boundary towards Virginia was long in dispute. The western part of it was not finally fixed until 1910, by decree of the United States Supreme Court (217 *U. S.* 1), in favor of the claim of West Virginia. For the first century, Maryland was very similar in social and economic conditions to Virginia; but in 1729 Baltimore town was laid out, and, in 1733, the first German settlers came from Pennsylvania into the fertile valleys of western Maryland. These steps were the beginnings of a great commercial city and of a close association with Pennsylvania and the West which made Maryland a border state.

Revolutionary History.—At the beginning of the Revolutionary period, Maryland was held back from the movement toward independence,

through the tact and popularity of the last provincial governor; but ultimately she cast in her lot with the other colonies. A convention of the freemen, with an executive committee of safety, governed Maryland from 1774 and drafted a constitution, which was not submitted to the people, but under which the state government was organized in 1777. The constitution contained a declaration of rights and a form of government, which provided for a continuance of a bicameral legislature. There was a house of delegates, containing four members from each county and two from the city of Annapolis and from the town of Baltimore. The general assembly met annually until 1846 and afterwards biennially, in the even years. The senate was composed of fifteen men, six of whom were residents on the eastern shore of the Chesapeake, elected for 5 years, by an electoral college, composed of 2 members from each county and one from Annapolis and from Baltimore town. The governor was elected annually by joint ballot of the two houses. In each county, a sheriff was elected, but all other officers were appointed by the governor, with the consent of a council of five men, annually elected by the general assembly. While in hearty sympathy with the continental cause, Maryland refused to accede to the Articles of Confederation until March 4, 1781, when she had been assured that there was no danger from the large states and that the western lands would become the property of the general government. Maryland's sympathies were with the party that advocated a closer union and her state convention ratified the Federal Constitution, by a large majority, on April 25, 1788.

Later History.—The state has always been conservative in politics and the Federalist party existed in Maryland until it was merged in the Whigs. Property qualification for the suffrage was abolished in 1810 and the democratic movement led to the abolition of the electoral college for the state senate in 1837 and the substitution of a senate, one of whose members was elected from each county. At the same time, the equality of counties in the house of delegates was destroyed and Annapolis was merged in Anne Arundel County. The governor's council was also discontinued and the confirmation of his appointments was given to the senate, while the governor himself was elected by popular vote for a three years term, successively from one of three districts into which the state was divided.

In 1851, a new constitution was ratified by popular vote. It provided for a very large number of officers, including judges, to be elected by the people and changed the terms of office of governor and senators to four years, while it reorganized the administration of the finances. During the Know Nothing (*see*) period, the Native American (*see*) party, absorbing the Whigs, was dominant for a time.

At the beginning of the Civil War, the state's position was a difficult one; but, after some hesitation, she decided to remain in the Union. In 1864, a constitution was declared adopted by popular vote which abolished slavery and disfranchised sympathizers with the Confederate States. It provided for a lieutenant-governor, divided Baltimore into three legislative districts, required registration of voters, and established a system of public education.

Present Constitution.—A reaction against the exclusion of so many voters from the suffrage caused the adoption of the present constitution by the people on Sept. 18, 1867. It provides for a vote on the question of calling a constitutional convention every 20 years, but the people have decided at both such submissions that they wish no important change in the government. Indeed they have thrice refused to limit the right to the franchise, by adopting amendments designed to exclude negroes. Under the constitution, the Democratic party controlled the state until 1895, when a combination of independents and Republicans placed the latter party in power and the conservatism of the voters has made the state since that time frequently Republican on national, and Democratic on local, elections.

The governor is elected for four years and has great appointive power. The general assembly consists of two houses: the senate, composed of one member from each of the 23 counties and four from Baltimore city, is a continuous body, elected for four years; the house of delegates, contains from two to six members from each county, according to population, elected on a general ticket, and six members from each of Baltimore city's four districts. The Australian blanket ballot was adopted in 1890. The legislative sessions, held biennially, do not exceed 90 days. For judicial purposes, the state is divided into eight circuits, one of which comprises Baltimore city and each of the others two or more counties. In each county circuit, there is a chief judge and two associate judges. In Baltimore city, there are ten judges. From the courts of the circuits, appeal lies to a court of appeals, composed of the chief judges of the county circuits and an especially elected judge in Baltimore. Local government is in the hands of boards of county commissioners elected by the people, except in so far as it is exercised directly by the state, or by the boards of incorporated municipalities. The county school commissioners are appointed by the governor. The state's financial affairs are managed by a comptroller, elected biennially by the people, and a treasurer, elected biennially by the general assembly on joint ballot. These officers, with the governor, form a board of public works. Maryland has also established a number of boards or commissions for various purposes in

recent years; thus there are a state geological survey, a good roads commission which is expending large sums of money, a tuberculosis commission, a lunacy commission, etc.

Population.—During the first half century of the province's history, the immigrants were chiefly white and in 1700 it is estimated there were 25,000 settlers. In the 18th century, large numbers of African negroes were brought in as slaves. In 1775, the population was estimated as 225,000. In 1790, it was 319,728, of which number 111,079, or 34.74 per cent were colored persons. In 1850, the population was 583,034, of which 28.32 per cent were colored; in 1900, 1,188,044, of which 215,897, or 18.17 per cent were colored; and in 1910, 1,295,346, of which 232,250, or 17.93 per cent; were colored.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS; STATE LEGISLATURE.

References: John L. Bozman *History of Maryland to 1658* (1837); W. H. Browne, *Maryland, the Hist. of a Palatinate* (1884), Ed., *Maryland Archives* (1884–1911); J. V. L. McMahon, *Hist. of Maryland* (1831); Maryland Historical Society, *Fund Publications* (1867–1901); C. D. Mereness, *Maryland as a Proprietary Province* (1901); T. J. Scharf, *History of Maryland to 1880* (1879), *History of Western Maryland* (1882); B. C. Steiner, *Citizenship and Suffrage in Maryland* (1895), *Institutions and Civil Government of Maryland* (1899); E. S. Riley, *Legislative Hist. of Maryland* (1906); *Maryland Manual* (1896–1913); F. N. Thorpe, *Federal and State Constitutions* (1909), III, 1668–1826. BERNARD C. STEINER.

MASON AND DIXON'S LINE. Ambiguous phrases describing the boundaries of Maryland and Pennsylvania caused a long dispute respecting the line (fortieth parallel of latitude) separating the two colonies. Two English surveyors, Charles Mason and Jeremiah Dixon, determined (1763–1767) the boundary 39° 43′ 26″ thus giving Pennsylvania nineteen miles of territory, south of the disputed line. Historically, the name was widely used to indicate the line separating free and slave states, the northern limit of slavery, and, in general, the conflict of interests between the North and South. See PENNSYLVANIA. **References:** J. Veech, *Mason and Dixon's Line* (1857); E. Channing, *Hist. of the U. S.* (1908), 106–109 (map), 128 (bibliography). M. W. J.

MASSACHUSETTS

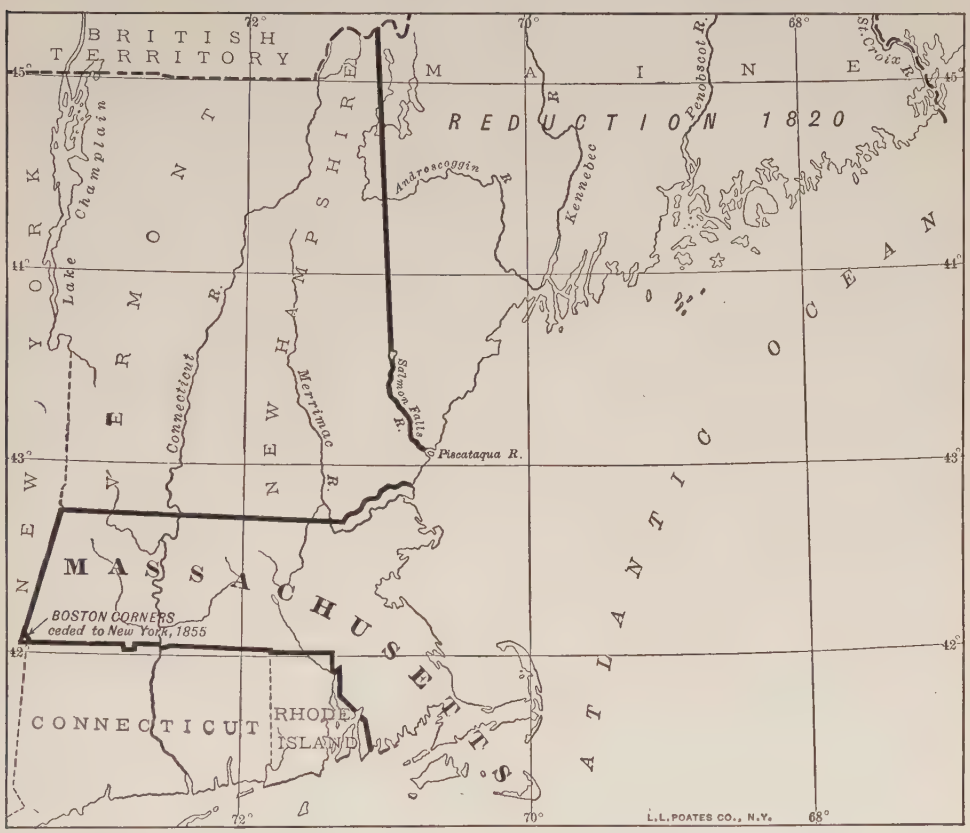
Colonial Self-Government.—The origins of the commonwealth of Massachusetts are to be sought in two essentially independent colonial enterprises of the early seventeenth century: (1) the planting of the self-organized, self-governing colony of New Plymouth (*see* PLYMOUTH); (2) the establishment of the more flourishing and scarcely less independent chartered colony of Massachusetts Bay (*see*). The charter of Massachusetts Bay was annulled in 1684; but following the collapse of the Andros régime in 1689 a new charter was conferred in 1691, whereby the seventeen towns of New Plymouth, together with the territory of Maine, were incorporated with the seventy-five towns of Massachusetts under the general name of Massachusetts Bay.

Government under the Province Charter.—The charter of 1691 reached the colony and was put in operation May 14, 1692. From that date it remained the fundamental law of Massachusetts until the adoption of the present state constitution in 1780. The governmental arrangements which prevailed under it were distinctly less liberal than those of the earlier period; yet they afforded a wider opportunity for popular control of affairs than existed in any of the other contemporary royal provinces in America. At the head of the colony was a governor, appointed now by the Crown for an indefinite tenure. Associated with the governor was a council of twenty-eight members, elected annually by the General Court, or colonial legislature. The council itself composed the upper house of the General Court; so that in Massachusetts was presented the unusual spectacle of an upper chamber elected predominantly by the lower. Massachusetts was, indeed, the only American colony in the eighteenth century in which the governor's council was elected at all. The functions of the council were at the same time legislative, executive, and judicial. Except for the right to initiate money bills, it enjoyed law-making power coördinate with that of the assembly; it had the right to approve or disapprove all appointments made by the governor; and it acted as the supreme court of the colony, exercising likewise the equity jurisdiction which legally was vested in the governor. The assembly, or lower branch of the General Court, was composed of representatives proportioned roughly to population and elected annually by the voters in town-meetings. It had general legislative powers. The colonial judiciary consisted of such tribunals as the governor and council chose to establish, presided over by judges appointed on a tenure of good behavior by the same authority, the council itself serving as a supreme court. In the regulation of local affairs the town was the essential unit; the county was important only as a judicial

district. Town government still exists in Massachusetts and to-day it is strikingly like that which prevailed two hundred years ago.

Revolutionary Changes.—In the protests of the American colonies against the economic and political policies of the mother country after the close of the Seven Years' War, Massachusetts early assumed leadership. The result was a sweeping modification of the province charter, accomplished by means of an act "for the better regulating the government of the Province of Massachusetts Bay," assented to by the Crown May 20, 1774. The rapidly increasing tension of the period prevented the full enforcement of the act. In October, 1774, the people of Massachusetts broke with the authority of the Crown by setting up a provisional government consisting of an irregularly constituted "provincial congress." In July, 1775, at the instigation of the Continental Congress, there was effected a more orderly arrangement. A representative assembly was chosen by the people in their town meetings; this assembly elected a council of twenty-eight; and James Bowdoin, as president of the council, became the chief executive of the commonwealth. Barring the authority of the King, the new government was virtually such as was provided for in the charter of 1691; and the essentials of it were preserved until near the end of the Revolution (*see* STATE GOVERNMENTS DURING THE REVOLUTION).

The Constitution of 1780. In September, 1779, in compliance with a demand of a considerable portion of the people for a new frame of government, a convention was assembled at Cambridge for the purpose of drawing up a state constitution. The task of the convention was completed in March, 1780, and the newly framed instrument was submitted to the people, under the specification that a two-thirds vote should be necessary for its approval. The result was favorable. A convention at Boston, June 15, 1780, formally adopted the constitution, and the instrument went into effect in the following October. It is worth observing that this was the first occasion in America upon which a constitution was submitted to popular vote. In the meantime Massachusetts had been among the first states to approve the project of a permanent American union by ratifying the Articles of Confederation (*see*). The Massachusetts delegates in the Continental Congress, along with the delegates from seven other states, signed the Articles July 9, 1779. Over the ratification of the



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Federal Constitution a decade later there was a tremendous contest. In the convention elected to determine the policy of the state with reference to the new instrument, the preponderance of sentiment was at first clearly against ratification. It was only after the subject had been threshed out during weeks of debate that a sufficient number of delegates were won over by the Federalists to ensure favorable action. In February, 1788, by the close vote of 187 to 168, the convention formally declared for the ratification of the Federal Constitution.

The Constitution Today.—The constitution of the commonwealth today is that put into operation in 1780. There have been added to it a total of thirty-six amendments, of which the first nine were ratified April 9, 1821, and the last one was adopted November 6, 1894. But through all this period the fundamental structure of the political system has not undergone marked change. The text of the constitution falls into four principal parts. The first consists of the preamble. The second comprises a declaration, in thirty articles, of "the rights of the inhabitants of the commonwealth." The third in six chapters and a total of sixty articles stipulates in detail the frame of government. And the fourth consists of the thirty-six amendments. Under the provisions of an amendment adopted in 1821 an amendment, in order to become effective, must be voted by a majority of the senate and by two-thirds of the house of representatives of two successive legislatures and must be approved by the people by a majority of those voting upon the amendment.

The executive power within the state is vested in the governor, assisted by a council consisting of the lieutenant-governor and eight other members. The governor is elected annually by popular vote. Religious and property qualifications for the governorship were once prescribed, but since 1892 there has been no specified qualification save that of seven years of continuous residence within the commonwealth immediately preceding election. Members of the council are elected by popular vote in the eight districts into which, for this purpose, the state is divided; and the people choose annually the secretary of the commonwealth, the treasurer and receiver-general, the auditor, and the attorney-general. The governor exercises general supervision over the administrative affairs of the state. With the consent of his council, he appoints the solicitor-general, the judges, and numerous other officials. He is commander-in-chief of the armed forces of the state. He exercises the power of pardoning convicted offenders, except persons convicted in impeachment proceedings. He has power to adjourn or to prorogue (for not more than ninety days), and to summon, the General Court. And he possesses the right to approve or to veto all legislative measures. In the event of a vacancy in the chair of the chief executive—whether by death, by absence from the commonwealth, or by reason of any other circumstance—the lieutenant-governor, elected annually by the people and possessing qualifications identical with those of the governor, is vested with all the prerogatives and responsibilities of governor. Except when acting as governor, the lieutenant-governor regularly occupies a seat in the governor's council.

The legislative body, or General Court, consists of two chambers, the senate and the house of representatives. The senate contains forty members, elected annually by popular vote, each from one of the two score senatorial districts into which the state is divided. The house of representatives consists of 240 members, elected in 173 districts, each of which returns one, two, or three members in proportion to population. Each house is final judge of the elections, returns, and qualifications of its members; each elects its own officers and determines its own rules of procedure. A regular session every year is required, beginning on the first Wednesday of January. Money bills must be presented in the lower house, though they may be amended in the upper. Otherwise, the two houses possess absolutely coördinate legislative authority. A veto by the governor may be overridden by a two-thirds majority in both houses. The committee system has been brought to an unusually high stage of development in Massachusetts. Upon measures of large public interest hearings are announced through the press, and committee meetings are freely attended and participated in by both interested and disinterested citizens.

All courts of the state are established by law, and all judges are appointed by the governor, with the advice of the council, for a tenure of good behavior. At the top stand the supreme judicial court, with a chief-justice and six associate justices, and a superior court, with a chief-justice and twenty-two associates. In each of the fourteen counties is a probate court. There are likewise district courts, in the counties, municipal courts, and police courts, in the urban districts.

Local Government.—As in all New England states, the town (or township) is the essential unit of local government. Until 1822 Boston itself remained simply a town, whose affairs were regulated by a town-meeting, or primary assembly, of all qualified citizens. Until the date mentioned the towns were the sole political corporations in the state, and until 1857 they formed, as they still form in Connecticut, the basis of representation in the state assembly, each town, of whatever size, returning at least one member. There are in the state to-day (1913) 321 towns. They vary in population from fewer than two hundred to upwards of twenty thousand. Each is governed

by a town-meeting, or assembly, of all resident qualified voters, which meets at least once a year, in the spring, and from time to time as occasion requires (*see* TOWNS). Under the terms of a charter granted by the legislature of the state, a town may be converted into a city. There are in the state today, thirty-three cities. A city has, as its principal executive official, a mayor, and there are normally two legislative bodies—a board of aldermen and a common council. The municipal government of Boston (*see*) is typical of Massachusetts cities.

The county, in Massacusetts, as elsewhere in New England, is of secondary importance. It comprised originally an affiliation of towns for judicial purposes, and it is still preeminently a judicial district, in which civil and criminal courts are held, and in which a sheriff, a clerk, and certain minor judicial officials are elected by the people. For administrative purposes there is in each county a board of three commissioners, elected for three years, and also a treasurer; but the functions of these officials are restricted largely to the management of county buildings, the construction and supervision of highways, and the apportioning of the county tax among the towns and cities by which it is to be levied. There is within the county no council or other assembly which may exercise powers of a legislative character (*see* COUNTY GOVERNMENT).

For the general supervision of public instruction there exists a state board of education consisting of the governor and lieutenant-governor and of eight other members, one new member being appointed every year by the governor for a term of eight years. In each town and city there is an elective school committee. Towns containing as many as five hundred householders are required to support a high school; and school attendance is universally compulsory between the ages of seven and fourteen.

Political Conditions.—In national elections Massachusetts was uniformly in the Republican column until 1912. In 1876, the Republican plurality fell to 41,286, and in 1892, to 26,001; but in 1896 it was 173,265; in 1908, 110,423; and the normal figure cannot be put lower than 75,000 to 100,000 (*see* PARTY ORGANIZATION IN MASSACHUSETTS). In state elections the commonwealth is normally, though not invariably, Republican. In 1904, 1910, 1911 and 1912, the state elected a Democratic governor, and in 1910 the Democrats likewise gained control of the lower branch of the legislature. Legal voters in Massachusetts comprise all males twenty-one years of age or over who are native-born or naturalized citizens of the United States, and who have been resident within the state at least one year and within the city or town at least six months. Voters, however, must be able to read English and must have complied with the registration regulations prevailing within the city or town in which the franchise is to be exercised. Paupers and persons under guardianship are disqualified from voting.

During the session of 1911 there was enacted a state-wide primary law, providing for the direct nomination by party primaries of candidates for all offices to be filled at state elections, except presidential electors, and the direct election at such primaries of district members of state committees, members of ward and town committees, and of delegates to state conventions. The naming of candidates for consideration in the primary is required to be by nomination papers. Candidates for state office must be able to secure at least 250 signatures from each of four counties; candidates for other offices must have their papers signed by a number of voters equal in the aggregate to five voters for each ward or town in the district or county, but in no case may more than 250 be required. So far as the nomination of candidates is concerned, the convention system is entirely abolished. The sole remaining functions of the convention are to adopt a party platform, to nominate presidential electors, and to elect members-at-large of the state committee. A party convention consists of: (1) the delegates elected at the primaries, in number not fewer than one for each ward and town; (2) the members of the state committee; (3) the United States Senators from Massachusetts who are members of the party; (4) the candidates nominated at the direct primaries; (5) in years when no elections are held for certain offices, the incumbents of those offices who are members of the party.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; NEW ENGLAND; NEW ENGLAND, BRITISH PROVINCE; PLYMOUTH; STATE GOVERNMENTS, CHARACTERISTICS OF.

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MASSACHUSETTS BAY COLONY. In March, 1628–29, a group of English merchant adventurers obtained from James I a charter whereby were assigned to the Governor and Company of Massachusetts Bay in New England rights of settlement and powers of government within that part of New England lying between a line three miles north of the Merrimac and another three miles south of the Charles River, and extending westward to the South Sea. In accordance with the so-called Cambridge Agreement of August 26, 1629, the seat of government was transferred by the patentees from England to America, and from 1630 until 1684 the charter continued the basis of a vigorous and virtually independent colonial government. By the terms of the instrument full powers of government were vested in the governor, eighteen assistants, and the freemen of the company. The governor and assistants were elected annually by the freemen. With the growth of the colony a system of representation, beginning in 1634, was introduced; and the General Court, originally but the meeting of the stockholders, assumed definite form as a legislature. The suffrage franchise was restricted to church members in good standing. See Colonial Charters; Colonization by Great Britain in America; Massachusetts. References: H. L. Osgood, *The Am. Colonies in the Seventeenth Century* (1904), I, 141–576; Charter in F. N. Thorpe, *Federal and State Constitutions* (1909), III, 1846–1860. F. A. O.

MAXIMILIAN'S EMPIRE. Notwithstanding the special interest of the United States in republican government in America, it recognized at least two nominal empires, *viz.*, Brazil, founded in 1822, and Mexico under Iturbide, founded in 1821. The Monroe Doctrine (*see*) put forth in 1823, did not protest against monarchical government in America, except so far as the term "political system" might indefinitely include it; and the United States has shown little indisposition to recognize the dictators of Latin-American so-called republics.

The invasion of Mexico by a combined English, French and Spanish expedition in 1861, resulting, after the speedy withdrawal of Great Britain and Spain, in a military occupation by the French, was very unsatisfactory to the Federal Government. When, in May, 1864, the Archduke Maximilian, an Austrian prince, was placed upon the throne, nominally on the call of an assembly of notables, really by French bayonets, the attitude of the State Department was that if the Mexicans had actually set up a monarchy, the United States would not object; but that any such government imposed upon the Mexicans by external force was not allowable. Great efforts were made to secure a recognition of the Empire, both from the Federal and from the Confederate Government, but the Confederacy broke up before the idea could be brought to a head; and large numbers of federal troops were directed toward the Texas frontier in 1865. The Monroe Doctrine was never mentioned in the official correspondence, but the principle that the French military protectorate could not continue, was behind the action of the Federal Government. In April, 1866, such pressure was put upon the French Emperor, that he promised to withdraw the French troops. As soon as they were gone, the republican Mexicans defeated and captured Maximilian and he was executed by shooting in June, 1867. Maximilian himself seems never to have understood the state of the Mexican mind nor to have appreciated the dangers of his position.

See Intervention; Latin-America; Mexico, Diplomatic Relations With; Monroe Doctrine; Recognition; Recognition of New States.

References: J. M. Callahan, *Dipl. Hist. of the Southern Confederacy* (1901); H. H. Bancroft, *Hist. of Mexico* (1888), VI; J. H. Latané, *Dip Relations of the U. S. with Spanish America* (1900); W. A. Dunning, *Reconstruction, Political and Economic* (1907), 152, 156.

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MAXIMUM AND MINIMUM TARIFF. See Tariff, Maximum and Minimum.

MAYFLOWER COMPACT. The agreement, drawn up and signed November 11–21, 1620, by the Pilgrims, on board the Mayflower, in which they acknowledged allegiance to the English king and agreed to combine into a "Civill body politick" for the constituting of offices and enactment of necessary laws and ordinances to which they promised "all due submission and obedience." The compact was found necessary: (1) because the patent, setting forth the manner of government, received from the Virginia Company was inoperative outside the limits of Virginia; (2) on account of a revolt threatened by some of the company. The Pilgrims were English subjects on English soil without a grant of governing powers, hence they agreed to govern themselves until a patent should be obtained. The compact remained the sole basis of the government of Plymouth throughout its history as a separate colony. It was also important as the earliest of the plantation covenants which in substance was reproduced by several later settlements including the river towns of Connecticut, New Haven and Providence. See Plymouth. References: Text in W. MacDonald, *Select Charters* (1899), 33; A. B. Hart, *Am. Hist. told by Contemporaries* (1897), I, No. 98; E. C. Channing, *Hist. of the U. S.* (1905), I, 308–310; H. G. Osgood, *Am. Colonies in the Seventeenth Century* (1904), I, 291; L. G. Tyler, *England in America* (1904).

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MAYOR AND EXECUTIVE POWER IN AMERICAN CITIES

Colonial Mayor.—During the colonial period there was, in the government of the borough, no separation of executive from legislative functions. The sole organ of borough administration was a small council of which the presiding officer was called the mayor; but the mayor was simply a member of the council just as he is in the English boroughs of the present day. In some boroughs the mayor was appointed by the governor of the colony; in others he was chosen by the councilmen from among their own number; and in rare instances he was elected by popular vote. He held office always for a single year, but might be reëlected; and served in all cases without remuneration. The distinguishing feature of his position was that he possessed no powers other than those of a presiding officer. He had no veto power over decisions of the council and made no appointments to office. In certain of the colonial boroughs, as for example in Albany and in New York, the mayor was entrusted with various minor responsibilities such as the regulation of taverns, the supervision of markets, the holding of coroner's inquests, and the hearing of petty contestations at law. The pre-Revolutionary American mayor cannot in any sense be regarded as an independent executive officer. His office has developed its independence since the Revolution.

After the Revolution.—The outcome of the American Revolution and the subsequent adoption of the Federal Constitution developed a wholly new theory of administration in national and state government. This was the principle of division of powers or, as it is sometimes expressed, government based on the system of checks and balances. It was not long before this principle worked its way down into the framework of local administration and in a comparatively short time greatly altered the position and powers of the mayor. The first evidence of this change appears in the Baltimore charter of 1796, containing provisions that the mayor of the city should be chosen for a two-year term by a miniature electoral college, the members of which were to be elected by voters of the city, two from each of the eight wards. Property owners only were eligible to be elected and it was stipulated that the mayor should have a small annual salary. Even more distinctly one notes the influence of the federal example and analogy in the scope and character of the powers which this charter gave to the mayor. For example, the mayor's veto here made its appearance for the first time in an American city charter, since one of the provisions of the Baltimore charter of 1796 permitted the mayor to return without his signature any resolution of the city council, subject to be overridden by a three-fourths vote. Again, the mayor was given certain powers of appointment to municipal offices; but this power was closely circumscribed by the condition that he should select his appointees from lists submitted to him by the aldermen.

Nineteenth Century Development: Popular Election.—It becomes apparent from the foregoing and from a study of various other charters of the quarter century following the adoption of the Federal Constitution that the office of mayor in American cities tended to become a sort of branch of local administration. The mayors were no longer appointed by the governor but in most cases chosen by the council. Before long even this practice gave way in favor of the plan of electing mayors by direct popular vote. One of the first charters to adopt this practice was Boston's original city charter in 1822. Philadelphia first elected its mayor by popular vote in 1826 and New York followed in 1834.

Decay of the Councils.—In the matter of extending its powers, the municipal executive made comparatively small headway until after the middle of the nineteenth century. The Boston charter of 1822 gave the mayor somewhat broader appointing powers than those contained in the Baltimore charter of 1796, for it authorized the mayor to appoint whom he chose, subject to confirmation by the aldermen. But there was no distinct shifting of the balance of power from the legislative to the executive organ in American city government until about the eve of the Civil War. About this time the city council seems everywhere to have lost ground. This fact is commonly attributed to the demoralization in city government which seemed to come quite closely on the heels of the great alien influx of the period intervening between 1840 and 1855. The conduct of city affairs by the council developed extravagance, waste, inefficiency, and sometimes corruption. Various functions were entrusted by the council to cumbrous committees, the members of which had been selected as the result of deals and electioneering tactics. The committees gave little attention to the actual administration of their respective departments and demoralization of the city's business was an inevitable outcome.

State Administrative Bodies.—The natural result of all this was state intervention. City charters were altered in many cases in such way as to take functions from the council and give them to state-appointed boards.

Thus, in 1860, the legislature of Maryland transferred to a state board the police administration of Baltimore. A year later the legislature of Illinois did the same service for Chicago. In 1865 the legislature of New York withdrew from the council of the metropolis its control of police, fire protection, public health, and licensing, giving all these into the hands of state commissions. A course of reaction came against this policy of state interference; and in some cases the legislature relented and restored local control. When control was restored, however, it did not go back to the council but to separate executive boards, the members of which were to be appointed by the mayor or directly elected. Where the power of appointment went to the mayor it brought a substantial increase in the powers of his office; but even where the administrative boards were directly elected this meant a notable shifting of power and influence from the legislative to the executive branch of the city government.

Extension of Mayor's Powers.—During the second half of the nineteenth century the extension of executive influence in city administration has progressed very steadily. The old practice of requiring that the mayor's appointments, to be valid, should be confirmed by the aldermen, came, in time, to be looked upon with some disfavor; and in 1882 Brooklyn took the lead in eliminating this provision from the city charter. New York followed, and other cities of the same state in time adopted the Brooklyn plan. In other states a great many cities still retain the practice of aldermanic confirmation, but more and more are gradually abandoning it. Still it seems to persist even at the present day in the majority of American cities.

In the field of municipal finance, moreover, the office of mayor has gained the upper hand in many cities during the last quarter century. At one time the preparation of the municipal budget was wholly within the jurisdiction of the council. In some cities this has now passed to the mayor. In many others the drift is unmistakably in the same direction. The power to award contracts for municipal works, likewise, is drifting more or less completely out of the council's hands. Along with all this one notes a tendency to lengthen the mayor's term of office, to increase his stipend, and to afford him all due facilities for the effective exercise of his broadened authority.

Lack of Uniformity.—While this development of the office of mayor to a dominant position in American city administration can be followed in a general way when one views the country as a whole, it has not proceeded at the same pace in all sections. In cities like New York and Boston the present-day powers of the mayor dwarf into insignificance the authority of the municipal councils; but in cities like Chicago and Philadelphia it is otherwise, for there the municipal councils still maintain a strong grip upon the many important functions of local government. Indeed, it is very difficult, in describing the position and powers of the American mayor, to make any important statement without large reservations. When one speaks of the functions of the mayor in any particular English city, what he may say holds true of mayors in all English cities; or when one studies the authority possessed by the burgomaster of Cologne or Charlottenburg or Düsseldorf, this may be applied without any considerable modification to any other Prussian city. In the United States it might almost be said that the powers of the mayor are in no two cities precisely alike. There is, in fact, scarcely a single statement concerning the jurisdiction of the municipal executive in this country which would hold true of all the cities and not many statements that might be accurately applied to even a majority of them. Nevertheless the American municipal executive can be described, so far as his position and powers are concerned, in a general way.

Method of Election.—In nearly all American cities the mayor is elected by direct popular vote. The only important exceptions are those cities which under the Galveston plan (*see* COMMISSION SYSTEM) elect a commission of five members by popular vote and then permit the mayor to be chosen by the commission from among its own membership. Candidates for the office of mayor are placed in nomination in the majority of cities by means of party caucuses or primaries. Some have adopted a primary which is non-partisan. In Boston the candidates for the mayoralty may be nominated only by petitions bearing the signatures of at least five thousand qualified voters. In one or two cities official nominations can be made by a very small number of signatures and the elimination of candidates is effected by a system of preferential voting at the polls. In any case the system of nominating candidates for the office of mayor is the same as that in vogue for the making of nominations to other municipal officers. In this matter there is wide variation in different parts of the country; the drift is unmistakably away from party caucuses and primaries, but upon the most desirable among the various other systems there appears to be no agreement. Elections are everywhere by secret ballot; and a plurality of votes (save in one or two cities which have adopted the system of preferential voting) is sufficient to elect.

Term of Office.—The mayor's term of office varies in different cities from one to four years. Many New England cities continue the annual term, which is a reminder of town government days. Most cities of small or medium size throughout the country have a two-year

mayoral term. Very few have adopted three years, but at least a dozen large cities have lengthened the mayor's tenure of office to four years. Among these are New York, Philadelphia, Chicago, St. Louis, Boston, and Baltimore, the six largest cities of the United States. In Boston, however, the mayor may be recalled from office at the end of two years. In New York any mayor may be removed at any time by the governor of the state, but only after a public hearing at which due cause for removal has been shown. The tendency in recent years has been to lengthen executive terms. Particularly in the larger cities the impression has gained ground that a two-year term is unprofitably short. Where it exists the mayor is apt to spend his first year of office in learning the duties imposed upon him by the city charter; then the second year must often be given over largely to the work of repairing his political fences for reëlection. The voters, accordingly, are too frequently asked to reëlect a mayor, not because he has made a record, but because he has not had a fair opportunity to make a record of any sort. The term of four years gives ample chance to make and set before the voters a record upon which they may pass fair judgment. It is none too long for this purpose, particularly if one bears in mind that in American cities, as distinguished from European, the mayor rarely brings any local administrative experience into office with him. He necessarily avoids mistakes by going slowly at first and this is apt to mean ineffectiveness during his initial year in office. The possibility of recalling a mayor before his term has expired seems to have disposed some cities to deal more liberally in the way of long terms.

Qualifications and Salary.—As a rule any qualified voter of the city is eligible to election, but some city charters impose additional qualifications. Some require at least five years of residence in the city; others prescribe a minimum age limit; and a few (as, for example, Baltimore) continue a property qualification. No city requires that a mayor shall have had previous administrative experience. As a matter of fact, previous political experience proves more often a handicap than otherwise to aspirants. Except in the very smallest cities the office carries an annual salary. This may be fixed in amount by the charter or it may be determined by ordinance. In practice it varies with the size of the city. New York pays its mayor $15,000, Philadelphia $12,000, and Boston $10,000 per annum. In smaller cities the annual stipend drops to a thousand dollars or even less. It is only in rare cases, however, that the office can be filled at other than a financial sacrifice on the part of its incumbent, for the demands upon the mayor of an American city for contributions to the support of his party organization and for general expenses connected with his nomination and election are certain to be large. The published returns of the Boston election of 1909 showed that the two leading candidates for the office of mayor spent from their own pockets for legitimate expenses a sum aggregating $130,000, or more than the total salary of the office for twelve years. In most cities the mayor is reëligible, the only important exception being Philadelphia. Reëlections are common, particularly in those cities which retain the one-year or two-year terms. Except in rare cases the office of mayor has not proved a stepping-stone to higher positions in the state or national government. Notable exception to this are the experiences of William E. Russell who, through the mayoralty of Cambridge, reached the governorship of Massachusetts; and Grover Cleveland, who began his political career as mayor of Buffalo and passed to the presidency of the United States by way of the governorship of New York.

Present-Day Powers.—According to the theory of American city government, the office of mayor carries no legislative power. It is a purely administrative office. As a matter of fact, however, the mayor is very often an important factor in local legislation. In a few cases, as for example in Chicago, the mayor is the presiding officer of the municipal council, but in most cities he has no such privilege and may address the council only by written messages. In these messages he may, and often does, suggest ordinances, and his suggestions always carry due weight. In those cities where the mayor is the head of his party organization, his recommendations, in so far as they relate to local legislation, are often practically decisive. In the main, however, the mayor's functions are administrative and this class of functions may be grouped under three main heads, namely: the veto power, powers connected with appointments, and powers connected with appropriations.

Veto Power.—The mayor's veto power is of course one of the many manifestations in local government of the influence of the federal analogy. Most city charters provide that every ordinance or resolution of the council must be sent to the mayor for his approval. If he approves it, he signs the measure, whereupon it becomes effective; if he does not approve it, he must return it unsigned to the council within a prescribed number of days with his reason for refusing his approval, otherwise it goes into force without his signature. When there are two councils the mayor sends the measure to that body in which it originated. When the council receives an ordinance or resolution from the mayor without his signature, a vote is forthwith taken upon the question of sustaining the mayor's veto, and if a prescribed majority of the councillors vote for the measure again, it goes into effect, the mayor's disapproval notwithstanding. Where there are two councils, the pre-

scribed majority must be obtained in each. In general, a mayor's veto can be overcome by a two-thirds vote of one or both councils as the case may be; but in some cities the requirement is more rigid. In Philadelphia for instance, the requirement is three-fifths, in Baltimore three-fourths and in San Francisco it is seven-ninths. If the required majority cannot be had, the mayor's veto is final. There is in the municipal system, however, no such feature as that which is commonly known in the national and state governments as the "pocket veto."

In practice the mayor's veto power has not, on the whole, contributed much to the efficiency of American municipal administration. In many instances it has no doubt served the cause of economy, but it has been quite as often an effective instrument of administrative intimidation. Mayors in all parts of the country have used it without much scruple to browbeat councils into submission. Vetoes and threats of vetoes have often forced councilmen to choose between the executive assassination of their own measures and a policy of submission to the mayor in other matters. Boards of aldermen, for example, have time and again confirmed the mayor's appointment under threats that measures in which they or their constituencies were interested would encounter the mayor's veto. The veto power has thus become in many cases an instrument of political jugglery. Its existence has not infrequently allowed councils to evade responsibility for ordinances or appropriations and has enabled them to throw upon the shoulders of the mayor an onus which the logic of the municipal system intended the council to bear.

Appointing Power.—A second power of the mayor is that of making appointments to the headships of the various city departments. In most American cities, large and small, a few of these officers are still directly elected by the people; in some others certain officers are still chosen by the council. Here and there one finds an important municipal officer appointed by the state executive; and in a few rare instances all appointments are made by the higher state courts. Most appointments to higher municipal posts are, however, not made in any of these three ways, but come within the jurisdiction of the mayor. Sometimes, as in New York City, San Francisco, and Denver, the mayor has a free hand in making these appointments, which means that his action is not subject to confirmation by any municipal or state authority. In exceptional cases, as for example in Boston, appointments to headships of departments when made by the mayor must be confirmed, before they are effective, by a state civil service commission. But in the great majority of American cities, the mayor's appointments are subject to confirmation by the board of aldermen where there are two chambers in the municipal council, or by the city council where there is only one chamber. For the adoption of this practice there seems to have been no reason other than that it corresponds, in a general way, to a feature of national and state government. It ought to be pointed out, however, that, while the system of council confirmation has had an extended vogue in the cities of the United States, people have of late come to view its alleged merits with increasing skepticism. More often than otherwise, this feature has afforded to mayors a convenient means of making inferior appointments without incurring the odium which would attach to this action if confirmation were not required. On the other hand, it may be doubted whether it has ever proved an effective check upon the exercise of the mayor's discretion or has in any way safeguarded the cities against the selection of incompetents. In most recent charters the confirmation feature has been eliminated.

Financial Powers.—The third important administrative function of the American mayor connects itself with the preparation of the municipal budget. There was a time when this work was performed by the city council and was entrusted by it to one of its standing committees. That is the plan still followed in the cities in the United Kingdom; but it never proved satisfactory in this country. Members of the city council spent a good deal of time maneuvering for positions on the finance committee and used their success chiefly as a means of getting appropriations for their own wards or districts. The size of various items in the budget became very largely a matter of relative efficiency in logrolling on the part of councillors, and the city treasury bore the burden of it all. Hence developed, in time, the practice of taking from the council all initiative in appropriations and loans. In some cases, as for example in the cities of New York state, the work of appropriating the budget, and thereby determining the annual tax rate, was given to a board of estimate and apportionment. In other cities, as for example in Boston, it was given directly to the mayor. It is still necessary in all cases, however, that the appropriations shall be voted by the municipal council and under various restrictions the council may yet increase or reduce the various items.

Miscellaneous Executive Functions.—In addition to the three foregoing administrative powers the mayor has duties of a rather miscellaneous sort. In some cities he is entrusted by the charter with the general supervision over the various municipal departments; but this of itself is no important addition to his authority. If the mayor has power to appoint and remove the department heads, he needs no specific grant of supervisory jurisdiction over what they do. If he has not the power to appoint and remove, a formal grant of this jurisdiction avails but little. In some cities

mayors are given the right to call for reports from the city departments at stated intervals. In others they are given the right to inspect accounts or to conduct investigations. In a few cities the mayor is authorized to call out the militia when necessary; and in some he may pardon offenders who have been convicted in the municipal court and may remove fines imposed there. Some city charters require that contracts shall have the mayor's approval.

Summary.—It is beyond question that the powers and duties which ordinarily attach to the office of mayor in American cities have greatly increased during the last forty or fifty years. In the other branches of American government, national and state, the adjustment of executive and legislative powers, as originally established, has not been very seriously disturbed. But in the realm of municipal administration the shifting of power has been very marked indeed. From his original place as a dependent and subordinate of the municipal legislature, the mayor's office has risen steadily to a plane where it is at least coördinate in powers with the council and very often superior to it in point of real influence. This means, of course, that the authority and prestige of the municipal council has been correspondingly impaired. Whether this development has served on the whole to increase the efficiency of municipal administration, is an open question.

See APPOINTMENTS TO OFFICE; BOARDS, MUNICIPAL; CABINET GOVERNMENT, THEORY OF; CITY AND THE STATE; COMMISSION SYSTEM OF CITY GOVERNMENT; MAYOR IN EUROPEAN CITIES; MUNICIPAL GOVERNMENT, FUNCTIONS OF; POLICE IN AMERICAN CITIES; SALARIES OF PUBLIC OFFICIALS; TERMS OF PUBLIC OFFICERS; VETO POWER.

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MAYOR IN EUROPEAN CITIES. In no important European city is the office of mayor regarded as an independent executive post without accountability to the other organs of city government. The mayor is in all cases either appointed by the higher authorities or chosen by the municipal council, usually the latter. In no case is he elected by popular vote. The mayor's position and powers differ greatly in different countries, but in the more important countries they are substantially as follows:

England.—The mayor is chosen for a one-year term by the aldermen and councillors who, sitting together, constitute the borough council (*see* LOCAL GOVERNMENT IN ENGLAND). He may be chosen by the council from among its own membership, which is usual, or from outside, which is not at all uncommon. The English mayor receives no salary fixed by statute, but the council is empowered to grant him "such remuneration as it may think reasonable." The amounts so granted are not usually more than sufficient to pay the necessary public expenses connected with a year's tenure of the office. The mayor presides at all meetings of the council; but he does not appoint the council committees, and he has, of course, no veto power over the acts of this body. He makes practically no appointments, and indeed has no powers of any consequence save those which he possesses as a member of the council.

France.— In France the *maire* of every commune is chosen for a four-year term by the communal council from the ranks of its own members (*see* MUNICIPAL GOVERNMENT IN CONTINENTAL EUROPE). He receives no fixed salary, but may be granted, with the approval of the prefect (*see*) a sum sufficient to cover his expenses. But the French *maire* has important powers both as the administrative head of the commune and as the local agent of the central government. He presides at all meetings of the municipality. He prepares the annual budget of the municipality, presents this to the council, and when it has passed that body, transmits it to the prefect for his approval. In the larger municipalities the budget must also have the approval of the national authorities. He makes most of the appointments to municipal offices and has a general supervision over the various municipal departments. In this work he is assisted by one or more *adjoints*, or assistant mayors, also chosen by the council. Subject to the control of the prefect he is in charge of local police. As local agent of the central government he has various duties connected with the preparation of voters' lists, the care of the *état civil* or communal registry, and the administration of the laws relating to compulsory military service. Various matters relating to sanitation, traffic on the streets, and poor relief, are also within the mayor's jurisdiction.

Germany.— The German mayor or *Bürgermeister*, is chosen by the municipal council (*stadtrerordneten Versammlung*), usually from outside its own membership. The term is rarely less than twelve years, and often for life. The German *Bürgermeister* is well paid; is an

expert in municipal administration; is given full security of tenure; and looks upon his office as a profession. He presides at meetings of the administrative council (*Magistrat*) and is the chief member of this body in point of influence. He does not, however, make appointments to the more important municipal posts and does not have charge of the city departments. He is rather *primus inter pares* in the administrative council which is the real administrative organ of the city, possessing in addition several special prerogatives which are mainly of an honorary or formal character.

Other Countries.—In Belgium the *maire* is appointed with the approval of the crown from among the members of the municipal council and has powers which correspond roughly to those of his colleague in the French commune. In Spain the *alcalde* is chosen by the local council for a four-year term; and in Italy the *syndic* is selected triennially by the council from among its own members. The Austrian *Bürgermeister* is chosen for six years by the municipal council with the confirmation of the Crown.

See Executive and Executive Reform; Municipal Government in Continental Europe.

References: W. B. Munro, *Government of European Cities* (1908); Albert Shaw, *Municipal Government in Continental Europe* (1897); P. W. L. Ashley, *Local and Central Government* (1907).

William Bennett Munro.

MEAT INSPECTION. The entire system of national meat inspection is based upon the power of Congress to regulate interstate commerce. The Federal Government is wholly without power to use any supervision over meat which is slaughtered, sold and consumed within an individual state, and that is about one-half of the entire meat of this country. For this product there is a very inadequate state or municipal inspection, or none at all. The municipalities should have the service of competent veterinary surgeons, as does the Federal Government.

Federal inspection has been operative for over twenty years, the first meat inspection act having been March 3, 1891, and is thoroughly systematized and efficient. Most of the establishments inspected by the Government are grouped in the great slaughter-house centers.

Previous to 1891 the statutes were inadequate because they did not follow the meat through the different processes of curing, pickling, etc., nor supervise the sanitary conditions of the surroundings. The country was roused by a lurid novel, *The Jungle*, describing conditions in some of the Chicago slaughter-houses, and a federal act of June 30, 1906, supplied these deficiencies. There is now a permannt annual appropriation of $3,000,000.00 for meat inspection by the Bureau of Animal Industry, under the Department of Agriculture, which employed 3,284 men in 1911. The consumer may feel safe in buying meat marked in purple ink, "U. S. Inspected and passed," but unfortunately about one-half of all the meat in the country lacks this guarantee.

See Commerce, International; Inspection as a Function of Government; Pure Food.

References: U. S. Bureau of Animal Industry, *Annual Reports*, 1910; A. D. Murphy in *Circular No. 185* (1912); G. H. Parks in *Circular No. 173* (1909).

Paul Pierce.

MECHANIC ARTS HIGH SCHOOLS. See Schools, High, Mechanic Arts.

MECHANIC'S LIEN. This term is usually applied to a claim by a man furnishing material on a building, on land, or other improvement of real estate; but it is also sometimes applied to other liens, such as that of lumbermen on the logs cut, or artisáns' liens on the goods on which they work. This latter is a very old doctrine of the common law. In this country the ordinary lien is the mechanics' lien on real estate, by which the effort is to give the workman an absolute guaranty of his wages or materials regardless of the fact whether his work was ordered by or given to the owner of the land or building; it has been carried so far as sometimes to be held unreasonable and unconstitutional. It has been sought even to make such liens superior to a mortgage of the land previously executed and recorded. There is hardly any body of legislation throughout the United States of which the bulk is so vast and so frequently amended. See Labor, Protection to.

References: U. S. Industrial Commission, *Report*, V (1900), 96, 97; U. S. Labor Commissioner, "Labor Laws of the U. S." in *22d Annual Report*, 1907; S. Bloom, *Mechanic's Liens* (1910).

F. J. S.

MECKLENBURG DECLARATION OF INDEPENDENCE. On May 31, 1775, the committee of safety of Mecklenburg County, North Carolina, meeting in Charlotte, passed twenty resolutions declaring the royal authority suspended and providing for the administration of local affairs until action should be taken by the provincial congress or Parliament should renounce its "pretentions." These resolutions were printed in the *South Carolina Gazette* of June 13 and elsewhere, were transmitted to the home government by the royal governor, Martin, and were forwarded to the Continental Congress where they appear to have been received with some reserve. Although more independent in spirit than most of the resolutions of the time they by no means constituted a declaration of independence. As early as 1783, however, the tradition of western North Carolina had begun to regard them as such, a view which was favored by the

burning of the original records in 1800. Shortly after their destruction, John McKnitt Alexander, in whose house they had been kept, attempted to reconstruct them from memory, in which process he appears to have confused the resolutions of May 31 with the national Declaration of 1776, and assigned to them a wrong date. An elaborated form of Alexander's version, by whom compiled is not known, published after his death in the Raleigh *Register* of April 30, 1819, gave definite shape to the tradition, which now recited that on May 19–20, 1775, a convention met in Charlotte and passed a declaration of independence in the form of five resolutions, the wording of which was so similar to that of certain phrases of the national Declaration, that the framers of this latter had evidently drawn their inspiration from the Mecklenburg document. The resolutions of May 31, which could not be overlooked because printed in various contemporary newspapers, were explained as being "by-laws" passed later than and as supplementary to the "declaration." In this form the tradition came to be popularly accepted, not only in North Carolina but outside the state as well. In 1905, however, the publication of a spurious document, designed to confirm the tradition, led to a closer examination of the evidence and to the discovery of new material, with the result that the tradition was shown to be entirely unhistorical, a view already held by the most critical students. **References:** The best defense of the tradition is G. W. Graham, *The Mecklenburg Declaration of Independence* (1906); the final critical study, W. H. Hoyt, *The Mecklenburg Declaration of Independence*, (1907); A. S. Salley, Jr., "The Mecklenburg Declaration" in *Am. Hist. Review*, XIII (1907), 16; A. S. Salley, Jr. and W. C. Ford, in *ibid*, XI (1906), 548–558. W. G. L.

MEDIÆVAL CITY LEAGUES. During the Middle Ages, many cities became practically independent. They developed considerable military strength, and entered into close commercial relations with one another. In order to safe-guard their commerce and secure their political freedom, they formed associations which took on a more or less federal character. Among the first of the mediæval cities to combine were those of Italy. The great Lombard League, though it did not effect a permanent federal organization, in 1167 formed a combination for military purposes strong enough to compel the confirmation of certain privileges. Other leagues also sprang up, temporary in character but effective, possessed of an occasional deliberative body which consulted on matters of common interest, and with sufficient coercive power to force unwilling cities to join. These leagues, however, resulted in no permanent organization on federal lines. Influenced by these Italian cities, there arose associations of German cities, the most notable being the federation of the more important Rhine towns, which united in a commercial combination known as the "Rhenish League," 1254–1350, holding assemblies at stated intervals and which, though possessing small legislative powers, nevertheless erected a federal court for the adjustment of controversies between the members. When the Rhenish League fell away, many of its members allied themselves to the Hanse or Swabian League. The Hanseatic League (*see*) added to the idea of combination for defensive purposes the character of union for purposes of offence. Primarily formed for commercial ends, it assumed, also, a political form and an international attitude, reserving the right to make war and enter into treaties of peace; born in 1367, it died in 1669. The same tendency of mediæval cities to federate was seen also in Spain and in the cities of Flanders and France. In Scotland this federating idea is found in a league which probably dates back to the Parliament of the Four Burghs, consisting originally of Berwick, Roxburgh, Edinburgh and Stirling, afterward growing into the Convention of Burghs, which exists to the present day. The Parliament of the Four Burghs dates from 1295. The federation of cities in England was confined to the Cinque Ports, 1278–1660, composed of the towns on the seacoast most exposed to foreign attacks, and possessing extraordinary privileges of self-government. See CONFEDERATION; HANSEATIC LEAGUE. **Reference:** A. B. Hart, *Federal Government* (1891), 37–43. B. E. H.

MEDIATION. See GOOD OFFICES; INTERVENTION.

MEDICAL INSPECTION OF SCHOOLS. See SCHOOLS, MEDICAL INSPECTION OF.

MEDICINE AND SURGERY, BUREAU OF. The Bureau of Medicine and Surgery is one of the bureaus of the United States Navy Department (*see*). It is under the direction of the surgeon-general of the Navy, and is charged with the supervision of the health and sanitation of the navy and marine corps. It maintains naval hospitals, a medical corps, a naval medical school, a hospital corps, and a hospital corps training school; and furnishes nurses and dentists for officers and enlisted men. **References:** Secretary of the Navy, *Annual Reports*; J. A. Fairlie, *National Administration of the U. S.* (1905), 160. A. N. H.

MEMORIAL DAY. See DECORATION DAY.

MENDING FENCES. An expression referring to the occasional return of a congressman or other official to his home state or district to make sure that the party machinery is in running order in preparation for his renomination and reëlection. O. C. H.

MERCANTILE APPRAISERS. Under the act of 1842 there was a system of appraisal of goods imported into the United States by men engaged in trade; the collector, in each case of protest, appointed two "discreet and experienced merchants." The system enabled one business man to know the trade methods of a rival, and gave rise to violent disputes. It was superseded in the administrative tariff of 1890 by the appointment of boards of general appraisers having final authority on values, and the right of decision on class of rates, subject to appeal to the courts. See APPRAISAL OF IMPORTED GOODS; APPRAISERS, BOARD OF GENERAL; TARIFF ADMINISTRATION. References: J. D. Goss, *Tariff Administration* (1890); *Administrative Tariff Act* (June 10, 1890); and later federal statutes. A. B. H.

MERCANTILISM. A system of political economy prevalent chiefly in the eighteenth century which, in its extreme form, held that gold and silver are the most desirable wealth and that any community is therefore under obligations to gather precious metals. It involved the attempt on the part of the state to import as few goods as possible and to export as much as possible, in order that gold and silver might be received in exchange or to make up the difference. This difference between exports and imports is commonly called the balance of trade (*see*). In order that gold and silver might be brought into the country, the system emphasized the importance of foreign trade, as compared with domestic, and endeavored to regulate trade in order that gold and silver might be introduced. It naturally preferred the importation of raw materials to the importation of manufactured materials. See ECONOMIC THEORY, HISTORY OF. References: G. Schmoller, *The Mercantile System* (1884, trans. by W. J. Ashley, 1897); C. F. Bastable, *The Commerce of Nations* (5th ed., 1911), chs. iv, v; W. Cunningham, *Growth of English Industry and Commerce in Modern Times* (4th ed., 1907), Pt. I; J. K. Ingram, *A Hist. of Political Economy* (1894), 36–54; L. Cossa, *Introduction to the Study of Pol. Economy* (trans. by L. Dyer, 1893), 193–210; A. J. Sargent, "The Economic Policy of Colbert," in *Studies in Economics and Pol. Sci.* (1899). E. H. V.

MERCHANT MARINE. The merchant marine of the United States includes: (1) documented vessels, comprising American-built vessels of twenty or more tons register, (a) registered for the foreign trade, or (b) enrolled for the domestic trade, and (c) licensed vessels of five to twenty tons register; (2) undocumented craft, such as barges, floats and lighters, that are always towed. The total American merchant marine includes about 14,000,000 tons of vessels, about half of which are documented, principally for domestic trade. See COASTING TRADE; DOCKS AND WHARVES, PUBLIC; IMMIGRATION; INTERSTATE COMMERCE LEGISLATION; NAVIGATION, REGULATION OF; PILOTAGE; REGISTRY OF SHIPPING; SEAMEN, STATUS OF; SHIPBUILDING; SHIPPING, REGULATION OF; STEAMBOAT INSPECTION; SUBSIDIES TO SHIPPING. E. R. J.

MERGER OF RAILROADS. In recent discussions of corporation practice, the term "merger" is given a broad meaning and is used to cover all forms of corporate combination, whether accomplished by absorption, consolidation or mere stock-holding. But if legal treatises are to be accepted as authority, "merger" in its narrower and more technical sense covers only those forms of combination in which two or more corporations are united by the transfer of the property of all of them to one, which continues its existence, the others being merged therein. This method of combination was common in railroad practice in the earlier years of system building; that is, particularly in the decades of the sixties and seventies. Efficient railroading demanded that connecting lines should be united to form through routes, that branch roads should be brought under a centralized management. Hence occurred the absorption of the smaller line by the larger, effected by a purchase of the road and franchise. This method, although now and again resorted to, is not commonly employed at present. The popular method of railroad combination is through purchase of securities. See HOLDING COMPANIES; NORTHERN SECURITIES CASE; RAILROAD COMMISSIONS, STATE; SHERMAN ANTI-TRUST ACT. References: F. A. Cleveland and F. W. Powell, *Railroad Finance* (1912), 291. F. H. D.

MERIT SYSTEM. A name which was adopted in contrast to the spoils system, and which is used to denote the method of appointment to public office in which selection is based solely upon the merit and fitness of the appointee for the position to be filled. It is synonymous with civil service reform and although broad enough to cover any method of appointment which will result in the object sought, it is commonly used to designate that system of appointment to public office which is based upon open competitive examination. The merit system in the United States was adopted from the English system. After unsuccessful attempts to curb the evils of the spoils system by means of non-competitive or pass examinations, competitive examinations were introduced in the British Indian service and in the national service in the British Isles in 1854–5. The system in England remained a limited competition until 1870 when open competitive examination was provided for. Bills for the establishment of the merit system in the United States service were introduced into Congress in 1864 and in 1865, but failed of

passage. A rider to an appropriation bill in 1871 gave the President power to prescribe regulations for admission to the civil service, and under this authority President Grant appointed the first civil service commission with George William Curtis as its chairman. The rules were suspended, however, in 1875 because of failure of Congress to appropriate for the support of the work of the commission and the first complete and detailed civil service law providing for the merit system was passed in 1883. Its application has been extended until the merit system now covers approximately 300,000 positions. Provision for the merit system has been made, also, in six states and over 200 cities. **See** APPOINTMENTS TO OFFICE; CIVIL SERVICE EXAMINATIONS; CIVIL SERVICE, FEDERAL; CIVIL SERVICE, STATE. **References:** C. R. Fish, *Civil Service and the Patronage* (1905), "Removal of Officials by the President of the United States" in Am. Hist. Asso., *Annual Reports*, 1899, I, 67–86; D. B. Eaton, *Civil Service in Great Britain* (1886); National Civil Service Reform League, *Publications*; P. S. Reinsch, "Civil Service," in *Readings on Am. Federal Gov.* (1909); E. B. K. Foltz, *Federal Civil Service as a Career* (1909), chs. iii, iv. ELLIOT H. GOODWIN.

MESSAGES, EXECUTIVE. The Federal Constitution provides that the President shall "from time to time give to the Congress information of the state of the Union" (Art. II, Sec. iii); and state constitutions confer upon the governor the right and duty to communicate with the legislature concerning the public affairs of the commonwealth. Under this provision the President transmits to Congress a message at the opening of each session, veto messages, and special messages from time to time as matters arise which he deems important. It was the practice of Washington and Adams to deliver the presidential message at the opening of Congress in person to the Senate and the House of Representatives in joint assembly. This practice, however, was abandoned by Jefferson who sent his message to Congress by his private secretary. The delivery in person was intended to invite a general discussion in Congress on the policy of the government. This works well enough in a parliamentary system, but is not particularly adapted to presidential government. Nevertheless, the custom was revived by President Wilson in 1913.

Preparation and Purpose.—The presidential message, especially that sent at the opening of each session of Congress, is by no means necessarily prepared by the President alone; and there are, indeed, one or two instances of its having been written by some one closely connected with the President. The material for the message is usually collected by the various departments and the President treats it as he sees fit. The message has been used for a large variety of purposes. It may be a perfunctory review of domestic and foreign affairs or the positive statement of American policy on some subject, as for example the Monroe Doctrine (*see*). It may be devoted to advocating some particular measure or set of measures to be enacted into law by Congress; and in fact it may be accompanied by complete drafts of bills. It may be used as a purely party document for the purpose of stating the policy of the party to the country, or preparing the way for a renomination of the President, or drawing the party together in the two houses, or disconcerting the opposition in Congress. Again, it may be used as a means of arousing public interest—for example, some of President Roosevelt's messages advocating social reforms not at the time within the realm of immediate practical politics. Again it may be used by the President for the purpose of rallying the country to the executive policy and bringing the pressure of public opinion to bear upon the members of the legislature.

Influence.—An examination of the presidential messages and the messages of governors of the commonwealths shows that it is in the executive message that the task for the legislature is set and the bid for popular support is made. This newer tendency was shown in a message of the governor of Massachusetts of January, 1892, in which he said that the privilege of addressing the legislature, accorded the governor by long established custom, was not best used for a perfunctory summary of the statements of various departments of the commonwealth all of which were set forth fully in their reports. He defined his own view thus:

> I believe it better to make this the occasion for a broader treatment of public questions, and for suggestions to the legislature and through it to the public of any policy or reform which seems to the governor wise and necessary, and on which he is ready to assume responsibility.

This sentiment was later expressed by Governor Hughes of New York who declared in one of his messages that:

> It is the governor's prerogative to recommend, and to state the reasons for his recommendation, and in common with all representative officers it is his privilege to justify his position to the people to whom he is accountable.

An investigation recently conducted into the practices of governors shows that this conception of the purpose and function of the executive message is generally shared by commonwealth executives throughout the United States.

The President or governor is the one officer in our system of government who represents his party as a whole, and it is largely to him that the country or particular state looks for results, not only in administration, but also in the enactment of laws. There is little that is new to Congress and to the country at large

in the President's annual review of political and domestic affairs. It is his formulation of party and executive policies that counts with the country. The presidential message is the one great public document which is widely read and discussed. Congressional debates usually receive scant notice; but the President's message is generally printed in full in the metropolitan dailies and is the subject of editorial comment throughout the country. More than any other single document it serves to crystallize public sentiment around definite measures of policy. It is only necessary to mention some of the great presidential messages to illustrate the truth of this statement: Monroe's message of December, 1823, declaring the policy of the United States toward European intervention in Latin-American affairs; Jackson's messages during the controversy over the United States Bank; Buchanan's message of December, 1860; Lincoln's war messages; Cleveland's messages on the tariff and the Venezuelan affair; and Roosevelt's messages on many aspects of foreign and domestic policy. Of course, the treatment which the recommendations of the President receive at the hands of Congress varies according to circumstances. They may be accepted because Congress is convinced that they are sound in principle, or because there is an effective demand for them in the country; or they may be accepted because the President, by his party leadership or personal favors or use of patronage, can bring the necessary pressure to bear on Senators and Representatives. The investigation of executive influence mentioned above shows that with few exceptions the legislatures of states are apt to follow the suggestions embodied in the governor's message if he is sufficiently urgent; and particularly when they are convinced that the governor has correctly gauged the popular temper with regard to any particular matter.

See Executive and Congress; Governor; President.

References: J. H. Finley and J. F. Sanderson, *The Am. Executive and Executive Methods* (1908), ch. xiv; P. S. Reinsch, *Readings on Am. State Government* (1911).

Charles A. Beard.

ME TOO. A derisive sobriquet bestowed by the cartoonists in 1881 upon Thomas C. Platt, Senator from New York, when he followed the example of his colleague, Roscoe Conkling, in resigning his seat in the Senate. See Civil Service, Federal; Senate, Courtesy of the.

O. C. H.

METRIC SYSTEM. July 28, 1866, Congress legalized the metric system for all purposes—the only system ever legalized by act of Congress. With the older system inherited from the English are associated units and tables in confusing variety. The new metric system, so simple in theory, proved so excellent in practice that it became the basis of the world system of scientific units called the centimeter-gram-second system. To the use of these international units is largely due the rapid development of electricity, geodesy, physics, chemistry, and the biological and medical sciences. Industry, being somewhat more conservative, retains in many places the older systems, mainly the English. In the United States, however, Congress has provided all the states with metric standards, has legalized the electrical measures based upon the metric units, fixed the subsidiary silver coinage in metric terms, and reaffirmed the legal status of the system in Porto Rico and the Philippines. By federal regulation the metric system is used in the work of the Marine Hospital service, and the medical work of the Army and Navy exclusively, and by preference most of the scientific work of the government is done in terms of the international system.

On May 20, 1875, the United States, with sixteen of the principal nations of the world became party to the metric convention of Paris, establishing an international bureau of metric weights and measures under the direction of an international committee. The institution is jointly supported by the leading nations of the world, twenty-four in number.

In the judgment of metrologists, the metric system is destined to become world wide for all purposes as it has already for scientific work. Its recent adoption by Denmark and the adoption by China of a new system based upon metric units and standards are evidences of its steady growth, while its use, especially in the newer lines of technology, assures its continued progress in the industries and trade. Practically every nation has legalized it and in most of them the metric system is obligatory. While the metric system is not expected to come without effort or expense, the compensating advantages have appealed to many industries even in advance of legislation.

See Weights and Measures, Standards of.

H. D. Hubbard.

METROPOLITAN POLICE. See Police, Metropolitan.

MEXICAN WAR. See Wars of the United States.

MEXICO. The United Mexican States (*Estados Unidos Mexicanos*) is the fourth largest of American Republics, following the United States, Brazil and Argentina. Its area is 765,537 square miles, situated between latitude 14° 30′, and 32° 42′ north, and longitude 86° 46′ and 117° 7′ west (Greenwich). The population was 15,063,207 in 1910, not quite 20 per square mile.

Conquered by Cortes, the Aztec Empire yielded to the Spanish civilization, but traces of

Concerning the settlement of the northern boundary of Mexico, see map of U.S.-Texas boundary dispute and of U.S. Southwest Acquisitions.
GULF OF CAMPECHE
YUCATAN PENINSULA
CARIBBEAN SEA
CUBA
JAMAICA
Mexico
Republic of MEXICO
Declared Independent, 1810.
Present Constitution since Feb. 5, 1867.
Mezcala R.
Lerdo R.
Grijalva R.
Usumacinta R.
April 1, 1893 and 1899
By treaty July 9, 1893
Belize
BRITISH HONDURAS (Belize)
Crown Colony
Republic of GUATEMALA
By treaty of Sept. 27, 1859
Motagua R.
Its dispute
Its boundary settlement
Guatemala
Republic of HONDURAS
Independent 1839
Tegucigalpa
Patuca R.
Coco or Wanks R.
Its dispute
Its dispute
Rep. of SALVADOR Ind. 1829
Rio La Paz
San Salvador
R. Lempa
G. of Fonseca
Choluteca R.
MOSQUITO TERRITORY
To Nicaragua by treaty with Gt. Brit. 1850; and by treaty of 1905
Republic of NICARAGUA
Independent 1839
Managua
Lake Nicaragua
Managua
San-Juan R.
Rep. of COSTA RICA
Org. 1848
San Jose
Panama Canal Zone Granted to the U.S. 1903
To the U.S. by Treaty of 1903
Republic of PANAMA
Org. Nov. 1903
Panama
In dispute
COLOMBIA
PACIFIC OCEAN
SETTLEMENT of BOUNDARIES in MEXICO and CENTRAL AMERICA
L.L. POATES ENGR'G CO., N.Y.
Longitude 89°20′ West 88° from Greenwich
100°
96°
92°
84°
80°
20°
16°
12°
8°

pre-Columbian influences are still strong in the people. The country was at first called New Spain (*Nueva España*) and then embraced the area between 9° and 40° north latitude, and 80° and 50° west longitude, the present states of Yucatan and Chiapas being under the captain-generalcy of Guatamala. Cessions of territory were successively made to the United States; Texas, 362,487 square miles, Guadalupe-Hidalgo treaty, 522,568 square miles, and Gadsden purchase, 45,535 square miles leaving the present area as above given (*see* ANNEXATIONS; TEXAS; COMPROMISE OF 1850; MEXICO, DIPLOMATIC RELATIONS WITH). Independence from Spain was declared September 15 and 16, 1810, and these dates are the national holidays, the centennial celebration having taken place in 1910.

Mexico is a federal union, and the constitution of the republic, adopted February 5, 1857, with various later amendments, provides for a republican, representative federal form of government, similar to that of the United States, the states of the union being free to regulate their internal affairs. The national government is vested in the legislative, executive and judicial branches. Congress is composed of the senate and chamber of deputies, the former consisting of 56 members, two for each state and the federal district, elected indirectly for a four years' term, one-half being renewed every two years. Deputies are elected in like manner, but for a two years' term, at the rate of one deputy for every 60,000 inhabitants, or fraction exceeding 20,000. A committee of 15 deputies and 14 senators represents congress during recess and is consulted by the president on all legislative matters. The president and vice-president of the republic are elected by electors for six year terms, the president being assisted by a cabinet of eight secretaries: interior; foreign affairs; finance and public credit; communication and public works; public instruction and fine arts promotion (*fomento*); justice; war and marine. A supreme court, circuit and district courts, compose the judiciary. Supreme court justices fifteen in number, are elected indirectly by the people for six year terms.

Mexico is divided politically into twenty-seven states, three territories and a federal district. Governors of the states are elected in the same manner as the president of the republic, as are also the legislatures and the judiciary of each state. Territories are administered by a governor appointed by the president, while the federal district is administered by three officials appointed by the president. States and territories are subdivided into municipalities (about the same as a township), which elect their own administrative councils. A *Jefe politico* in Mexico is a state official with certain functions like those of a sheriff. The states and territories with their capitals are as follows:

STATES AND TERRITORIES AND THEIR CAPITALS

Political Subdivisions	Capital
Federal District	Mexico City
States	
Aguascalientes	Aguascalientes
Campeche	Campeche
Chiapas	Tuxtla Gutierrez
Chihuahua	Chihuahua
Coahuila	Saltillo
Colima	Colima
Durango	Durango
Guanajuato	Guanajuato
Guerrero	Chilpancingo
Hidalgo	Pachuca
Jalisco	Guadalajara
Mexico	Toluca
Michoacan	Morelia
Morelos	Cuernavaca
Nuevo Leon	Monterrey
Oaxaca	Oaxaca
Puebla	Puebla
Queretaro	Queretaro
San Luis Potosi	San Luis Potosi
Sinaloa	Culiacan
Sonora	Hermosillo
Tabasco	San Juan Bautista
Tamaulipas	Ciudad Victoria
Tlaxcala	Tlaxcala
Veracruz	Jalapa
Yucatan	Merida
Zacatecas	Zacatecas
Territories	
Baja California	{ Ensenada (upper) / La Paz (lower)
Tepic	Tepic
Quintana Roo	Santa Cruz de Bravo

The army of Mexico has a force of about 27,000, in addition to which the *Rurales* maintained by the government, but not in the war department, somewhat similar to the Texas Rangers, amount to 2,750 men, as a national police. The navy is small, sixteen vessels for coast defense and patrol. The government has adopted the policy of national ownership and control of the railways; of the 16,000 miles in the country, 8,700 are under the direct influence of the government. The telegraph is a national institution as is to some extent the telephone service, being closely associated with the post office. Education, in the federal district and territories, is a national function, and in 1910 the (revived) national university was established. In the states education is managed locally and is compulsory, but the intention is to have the primary grades at least conform to the national scheme.

See ANNEXATIONS; COMPROMISE OF 1850; MEXICO, DIPLOMATIC RELATIONS WITH; TEXAS.

References: J. I. Rodriguez, *Am. Constitutions* (1905), I, 37–96; Pan American Union, *Publications*.

ALBERT HALE.

MEXICO, DIPLOMATIC RELATIONS WITH. The history of diplomatic relations between the United States and Mexico down to 1914 falls into five general periods, as follows:

Friendly Relations (1821–1829).—The first period was one of friendliness. The Mexican revolutions between 1810 and 1821 were viewed with sympathy in the United States and although the Government made efforts to preserve

THE TEXAS BOUNDARY CONTROVERSY

neutrality, the revolting colony was accorded belligerent rights, while the struggle was materially aided by filibustering expeditions into Texas and Nuevo Santander. Recognition was early sought, but was not accorded till 1822. In 1824 José Manual Zozaya was accredited first minister from Mexico, and in 1825 Joel R. Poinsett was sent to that republic. Mexico enjoyed such protection as was afforded by the Monroe Doctrine; but her plans to unite with Colombia to liberate Cuba in 1825 were opposed by the United States. In 1822 Mexico opened Texas to American immigration, and in 1828 and 1832 entered into treaties of boundaries and commerce, but the boundary treaty was never executed.

The Texas Question and War (1830–1848).— By 1830 had begun friction which finally resulted in war. The chief points at issue were the Texas question and claims. Inheriting

Spain's long-standing fear of Anglo-American expansion, Mexico attempted, in 1829, to close Texas to American immigration. The efforts of the United States to purchase Texas (1825, 1829, 1835) and internal trouble with the Texas colonists bred suspicion, and diplomatic relations, which had been strained in 1829, were for a time severed by Mexico in 1836. Mexican hostility was accentuated by the recognition of Texan independence (March 1837), by the prospect that Texas would be annexed to the United States, and by various minor grievances. On the other hand, inability to secure a settlement of claims of Americans against Mexico (some of which were of very questionable character) led the United States to sever relations in 1836 and to the verge of reprisals by force in 1837. Claims allowed by a commission under the conventions of 1839 and 1843 were only partially paid. Finally, as a result of the joint resolution of March 1, 1845, providing for the annexation of Texas, Mexico again severed relations (March 6 and 28). John Slidell was sent by President Polk in 1845 to attempt to reëstablish relations, and, if possible, to secure California, which was the central aim of Polk's Mexican policy. But Slidell was not received; meanwhile the United States army had approached the western border of Texas and war was declared in April, 1846.

During the war Polk coöperated in the restoration of Santa Anna to power in the hope of facilitating negotiations; but the offer was rejected, whereupon N. P. Trist was sent to Mexico with instructions essentially like Slidell's. After having been recalled for bungling, he negotiated the treaty of Guadalupe Hidalgo, ratified February 2, 1848, by whose terms Mexico ceded Upper California and New Mexico and accepted the Rio Grande as the Texas boundary, in return for $15,000,000 and the assumption by the United States of all outstanding claims. This treaty was one of the longest steps of the United States toward territorial expansion; only the connection of expansion with the slavery question prevented the absorbtion of a much larger portion of Mexico.

Unstable Relations (1848–1877).—The war was followed by three decades of unstable relations, extending down to the restoration of order in Mexico by Diaz. By the Gadsden treaty (Dec. 30, 1853) Mexico ceded a strip of territory south of the Gila River and a right of way across Tehuantepec; but border turbulence continued, and Mexico suffered from filibustering expeditions. Meanwhile, the United States in vain urged payment of new claims, and in 1858 the United States minister severed diplomatic relations, while Buchanan unavailingly recommended a settlement of grievances by force. Under Lincoln cordial relations were maintained with the Juárez government.

The French intervention in Mexico (1863–1867) threatened republican institutions in America, and the part played by the United States in terminating it may be regarded as a diplomatic triumph. In 1862 France, England and Spain occupied Vera Cruz by force, as a means of satisfying certain claims. Discovering the ulterior motives of France, England and Spain withdrew, whereupon France invaded the interior of Mexico and established Maxmilian, Archduke of Austria, as emperor. The United States protested, but so long as the Civil War lasted was powerless to interfere. On the return of peace, however, the withdrawal of the French troops was demanded and effected. Maxmilian, left to himself, was executed, and republican forms of government were restored.

In this period extradition and naturalization treaties were entered into (1861, 1868) and, as a result of the convention of 1868, mutual claims were satisfactorily adjusted. For another decade, however, harmony was greatly disturbed by border lawlessness, in consequence of which relations were again suspended in 1877.

Growth of Commerce and of Friendly Relations (1878–1911).—The next three decades were marked by a steady growth of centralized power in Mexico, greatly aided by the construction of railroads by American capital, and of a corresponding cordiality between the two governments. After 1880 border conditions rapidly improved; in 1882, a reciprocity treaty was signed; and the troublesome questions of the "free zone" and extradition were treated with the utmost good will. Within the period three important matters were adjusted: (1) the remarking of the southwestern boundary, 1891–1896; (2) the California Pious Fund controversy (*see*), arbitrated by the Hague Court in 1902; (3) most of the difficulties over the shifting of the Colorado and Rio Grande rivers. The good understanding between the two governments was manifested especially by their coöperation to maintain order in Central America (1907).

Revolution in Mexico and Strained Relations (1911–1914).—During the Maderista revolution, the United States was greatly embarrassed by the difficulties of maintaining neutrality, of preventing the violation of American territory, and of securing protection for Americans in Mexico. Meanwhile, pressure was brought to bear upon President Taft to intervene, but he refused. In February, 1913, a *coup d'état* resulted in the violent death of President Madero, and in making Victoriano Huerta provisional president. Though other nations recognized Huerta, President Wilson refused to do so, on the ground that his government had been established by force. During the months of civil war and anarchy which followed relations with the *de facto* Huerta Government became more and more strained,

and finally, to force reparation for a long series of insults, United States forces seized the city and port of Vera Cruz on April 21, 1914. The tender of the good offices of the representatives in the United States of Argentina, Brazil and Chile was accepted by the United States and General Huerta, and conferences looking to the settlement of Mexico's internal troubles and external difficulties were begun at Niagara Falls, Canada, in May.

See BOUNDARIES OF THE UNITED STATES, EXTERIOR; CALIFORNIA AND NEW MEXICO, ANNEXATION OF; CENTRAL AMERICA; MEXICO; WARS OF THE UNITED STATES.

References: G. P. Garrison, *Westward Extension* (1906), chs. vi–viii, xiii–xv, xviii; J. H. Latané, *Diplomatic Relations of the U. S.;* H. Smith, *Annexation of Texas* (1911); J. B. Moore, *International Arbitrations* (1898); *Informe de la Comisión Pesquisadora* (1874); J. S. Reeves, *Am. Diplomacy under Tyler and Polk* (1907); J. K. Polk, *Diary* (1910); Boundary Commission upon the Survey and Remarking of the Boundary between the United States and Mexico, "Report" in *Sen Docs.*, 55 Cong., 2 Sess., No. 247 (1898); J. D. Richardson, *Messages and Papers of the Presidents* (1896–99); Matthias Romero, *Mexico and the U. S.* (1898), 316; *U. S. Treaties and Conventions* (1899); see also diplomatic correspondence published in various forms in the U. S. federal documents. HERBERT E. BOLTON.

MICHIGAN

French Period (1634–1760).—Jean Nicolet, sent by Champlain to hold a fur-market among the Indians about Green Bay in 1634, was the first white man known to have come within the borders of the present state of Michigan. In 1641, Raymbault and Jogues held a mission at Sault Ste. Marie. When the Iroquois destroyed the Huron villages in the territory between the St. Lawrence and Lake Huron, the French missions of Ste. Marie, St. Ignace and St. Joseph were reëstablished in Michigan, on the sites now occupied by the cities so named. In 1658, the traders Radisson and Grosseilliers explored Lake Superior, and in 1671, at Sault Ste. Marie, Daunmont de Saint-Lusson took formal possession of the Northwest for Louis XIV. From St. Ignace, in 1673, Marquette and Joliet set out on their successful search for the Mississippi. In 1679, La Salle sailed up the Detroit river in the "Griffon," the pioneer vessel in lake commerce. In 1701, colonization began with the founding of Fort Pontchartrain (Detroit) by Cadillac, under a grant from Louis XIV. From the Company of the Colony which sought to control the fur trade throughout the Northwest, Cadillac extorted rights of traffic, and Detroit became the most important post in the upper country.

British Period (1760–1796).—From the occupation by the British in 1760 until the passage of the Quebec Act in 1774, Michigan was under military rule. The interval was filled by the Pontiac war of 1763–4, which devastated the country. The Quebec act extended the boundaries of Quebec to the Mississippi and the Ohio. The criminal laws of England prevailed; civil causes were determined by the Custom of Paris; and the stipends of the clergy were continued. Henry Hamilton, appointed lieutenant-governor and superintendent of Indian affairs by George III, established the seat of government at Detroit, which then had a population of 1500 white persons, of whom 267 were women or girls. In 1778, when George Rogers Clark, commissioned by Virginia, took possession of the towns on the Mississippi north of the Ohio, Hamilton, with a force from Detroit, occupied Vincennes, where he was captured by Clark. The peace treaty of 1783 included Michigan within the territory of the United States; but the British retained the northwestern posts until after the ratification of Jay's treaty in 1796, on account of the value of the fur trade. The region was included in the Northwest Territory and was covered by the Ordinance of 1787 (*see*); but did not come under the control of the United States till the surrender of the posts.

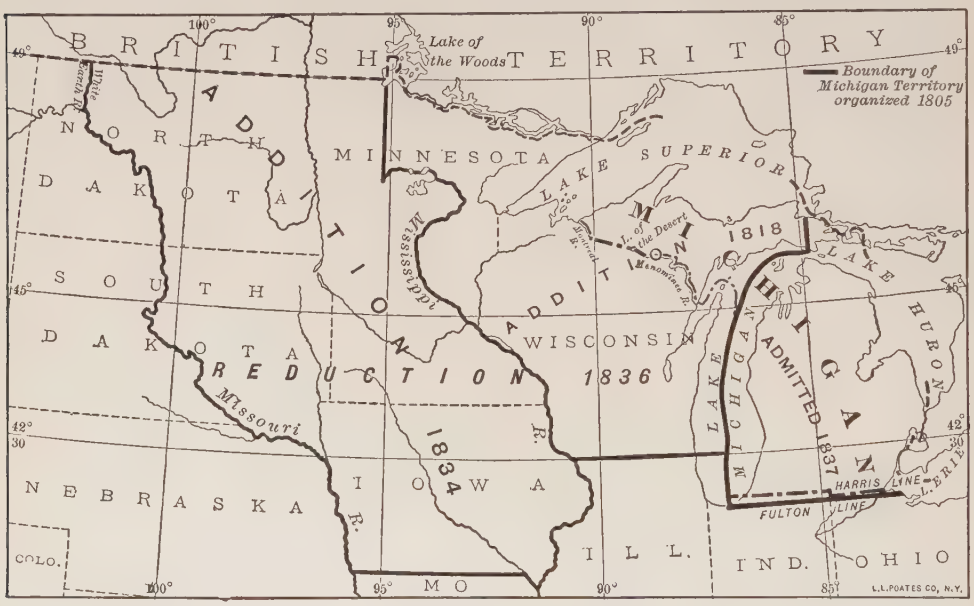
Territorial Period (1796–1835).—In 1805, Michigan Territory was set off, and was provided with a government consisting of a governor, a secretary and three judges, all appointed by the President of the United States, The legislative power was vested in the judges, who might adopt laws in force in the states, the governor having the veto power. This government proved to be weak, inefficient and even fantastic. The War of 1812 found the territory without a proper defense on the lakes, and Governor Hull was compelled to surrender Detroit to the British. In 1813, Commodore Perry's victory on Lake Erie and General William Henry Harrison's defeat of the British at the battle of the Thames restored Michigan to the Union. Under Governor Lewis Cass, the territory rapidly advanced through the various stages of territorial government, and in 1835 the population was sufficient for statehood. The opening of the Erie canal in 1825 brought many settlers to Michigan.

Statehood.—The convention to form a constitution was held in May, 1835; and in October, the constitution was adopted. The state government, elected at the same time, took office November 3. Michigan was not admitted

to the Union, however, until January 26, 1837. The delay was occasioned by a dispute over the southern boundary, which was fixed in the Ordinance of 1787 by a line to be drawn due east from the southern bend of Lake Michigan. Congress, however, had included in the state of Ohio a strip of land north of this boundary; and when Michigan sent an armed force to take possession of the territory claimed, the bloodless "Toledo War" ensued. Congress gave to the state the upper peninsula in exchange, and after the first convention of assent had rejected the boundary proposed, an informal ("frost-bitten") convention accepted the terms.

new features were those making all judges elective; substitution of general incorporation acts in place of special charters; provision for a sinking fund to pay the state debt; forbidding the issue of state script; prohibiting the loan of the state's credit to individuals or corporations; and putting a ban on internal improvements at state expense. The last named provision came to be used effectively in restraining towns from voting aid to railroads. The low salaries for state officers, as fixed in the constitution, were a prolific source of amendments.

Constitution of 1908.—In 1868 and again in 1874, revisions of the constitution were sub-



BOUNDARIES OF THE STATE OF MICHIGAN, SHOWING TERRITORIAL CHANGES

Constitution of 1835.—The first state constitution was adapted to meet the wants of a growing state. The governor, with the consent of the senate, appointed the secretary of state, auditor general and attorney general; justices of the supreme court were appointed for a term of seven years; county and town officers, including judges, were elective; slavery was forbidden; education was to be encouraged, and a university and schools maintained; internal improvements of all kinds were to be encouraged by the state. In 1847, the capital was changed from Detroit to Lansing.

Constitution of 1850.—The experience of the state in borrowing money to carry out public improvements was unfortunate, and the lines of railroad projected and partially built were sold to corporations. The distrust of public officials engendered was such as to lead to the formation of a new constitution which embodied a large mass of prohibitions and restrictions that often proved vexatious. Among the

mitted to the people, only to be rejected. In 1908, a convention of 96 delegates submitted a revision which was approved by a large majority. This constitution embodied the demands of the people for home rule for cities, and for the ownership and operation of public utilities. While provision was made to meet these requirements, the new constitution contains safeguards against hasty legislation.

Government.—The constitution recognizes the Supreme Being; it contains a declaration of rights; the legislature meets biennially; the senate consists of 32 members and the house of not fewer than 64 nor more than 100 members, all chosen for two years; the compensation of members is $800 for each regular session; no bill can become a law without the concurrence of a majority of all members elected to each house; the governor may disapprove of any item in an appropriation bill; the legislature may refer to the electors an enacted bill, and when so referred, a majority of the

electors voting is required before the bill becomes a law. The governor, lieutenant-governor, secretary of state, treasurer, land commissioner, auditor general and attorney general are elected for two years; vacancies in state offices are filled by the governor, with the consent of the senate, if in session; the salary of the governor and attorney general is $5000 per annum, and of the other officers named $2500. The judicial power is vested in a supreme court, circuit and probate courts, justices of the peace, and inferior courts created by the legislature. The supreme court is empowered to supervise all inferior courts, and modify their practice. Counties are bodies corporate; their officers are a sheriff, treasurer, register of deeds and prosecuting attorney, elected biennially. A sheriff may not hold office for more than two years in any period of six years. The board of supervisors consists of one from each township; but cities have such representation as the law provides. This board levies taxes and performs duties of a legislative and administrative character prescribed by law. County indebtedness is limited to three per cent of assessed valuation. Each organized township is a body corporate; its officers are a supervisor, clerk, commissioner of highways, treasurer, not more than four constables, and overseers of highways, all elected for one year. No township may grant a franchise not revocable at will, unless such franchise shall have been approved by the voters. Cities may not grant an unrevocable franchise unless such franchise shall have been approved by three-fifths of the voters. Cities may adopt their own charters, in conformity with general laws; such charters must provide a tax limit and a debt limit. Public utilities within or without the city may be owned and operated by the municipality.

Education.—Recognizing in its constitution the "sublime imperative" of the Ordinance of 1787, the state provides a system of education beginning with the primary schools (which receive the proceeds of the specific taxes on railroads and like corporations) and continuing through the university (*see* STATE UNIVERSITIES) with its technical and professional schools. An Agricultural College, Normal Colleges and a School of Mines, together with institutions for defective and delinquent classes, are maintained.

Political Conditions.—Since the organization of the Republican party at Jackson in 1854, the state has chosen an entire Republican electoral ticket at each presidential election except that of 1892, when five of its fourteen electors (then chosen by congressional districts) voted for the Democratic nominees, and 1912, when the candidate of the Progressive party carried the state. Democratic governors were elected in 1882, 1900, and 1912, the remainder of the state ticket being Republican. All United States Senators and the majority of members of Congress have belonged to the latter party. The protective tariff and the improvement of waterways have been factors in determining the vote.

Population.—In population, Michigan is the eighth state in the Union. In 1840 the population was 212,000; in 1900, 2,420,000, and in 1910, 2,810,172.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS.

References: R. G. Thwaite, *Jesuit Relations* (1896–1902); B. A. Hinsdale, *Old Northwest* (1888); Francis Parkman, *Conspiracy of Pontiac* (ed. of 1898); J. V. Campbell, *Political Hist. of Michigan* (1876); T. M. Cooley *Michigan* (rev. ed., 1905); A. C. McLaughlin, *Lewis Cass* (rev. ed., 1899); C. Moore, *Northwest under Three Flags* (1900); C. E. Carter, *Great Britain in the Illinois Country* (1910); H. W. Utley and B. M. Cutcheon, *Michigan as Province, Territory and State* (1906); Michigan Manual, 1911; Michigan Pioneer and Historical Society, *Collections* (1877–1912); J. A. Fairlie, "Amendment and Revision of State Constitutions in Michigan, etc." in Am. Pol. Sci., Assoc., *Proceedings*, V (1908), 175–184.

CHARLES MOORE.

MIDDLE OF THE ROAD POPULISTS. See POPULIST PARTY.

MIDDLE STATES. Origin.—The group of four middle states, New York, New Jersey, Pennsylvania and Delaware, is made up of communities different in their origin and history, and they have no close organic connection, state with state. Maryland, long counted in this division because it was a commercial colony and state, was also slave holding and therefore is commonly associated with the South. New York was a conquest from the Dutch and to this day has a noticeable infusion of Knickerbocker blood and spirit; but western New York was not incorporated into the state until after the Revolution, and is to a large degree a New England community. Pennsylvania, founded by Quakers, and New Jersey, with similar origin in part, as colonies received more foreigners than any other colony, and have a different race make-up from the neighbors north or south. Delaware is an adjunct of Pennsylvania.

Topography.—Physically the middle states are a part of the coastal plain, including the lower valleys of the Hudson, Delaware and Susquehanna, to which is added Pennsylvania beyond the mountains and the plateau of central and western New York. New York and Pennsylvania are threaded by the most important highways and waterways in the United States, connecting as they do the coast with the Great Lakes and the Ohio River.

Practically the Mohawk and Hudson River valleys are the commercial outlet of the St. Lawrence and lake system. This relation,

combined with the superb harbor of New York City (*see*), has made it the metropolis of America and the second city of the world. The double advantage of the easiest connection with the interior and the best harbor for foreign trade, has given rise to controversies with other great ports outside the middle states, particularly Boston, Baltimore, and Newport News, which have sought and obtained differentials (*see*) by which they are allowed to make a lower freight, in order to attract a part of the western shipments.

Industries.—In no section of the Union is there such a diversity of occupation. Great parts of New York and Pennsylvania are made up of rich farming land, and the county of Lancaster, Pennsylvania, usually produces a larger value of agricultural crops than any other county in the Union. Western New York and Pennsylvania were, for a long time, lumbering regions, though the good timber is now about gone. Mineral products abound: salt wells in New York; oil wells (now much reduced) in western Pennsylvania and New York; coal and iron in great abundance, both in eastern and western Pennsylvania, aided by cheap lake transportation from Lake Superior, which brings iron ore to meet coal between Erie and Pittsburg. Central and western New York are prosperous farming regions.

Besides heavy manufactures of iron, including armor plates, steel rails, bridges and structural material, eastern Pennsylvania and eastern New York have large manufactures of textiles, and New Jersey of pottery. Philadelphia and New York are the two most important manufacturing cities in the country. Pennsylvania has one of the few American plants for building steel ships; and the transportation and shipping of Philadelphia and New York employ great numbers of men.

Population.—The middle states in 1900 had a population of 15,639,413; in 1910 of 19,517,879, an increase of 25 per cent. It can hardly be said that there is a middle state people. No part of the Union has received so many foreigners, inasmuch as three-fourths of all the immigrants to the United States land in New York City. Much more than in New England, large enterprises are in the hands of non-English elements, as for instance the import business of New York City, and to a considerable degree the iron industry. Philadelphia still has a predominant element of descendants of the colonists. In New York probably not one-third of the grown men can trace their descent from an Englishman. The total number of foreigners and children of foreigners was (in 1900) 4,316,000; in New York City in 1910 it was 2,642,000, and of the total population of 19½ millions in the four middle states, the foreigners were at least seven millions. In addition, Pennsylvania contains several hundred thousand Pennsylvania Germans (locally called Pennsylvania Dutch) descendants of eighteenth century settlers, and still in many cases speaking German.

Government.—In government the chief contribution of the middle states has been to give the rest of the country an example of highly organized and often corrupt politics. Pennsylvania was the first state to develop the nominating convention, which appeared soon after 1790. New York was the first state in which recognized state bosses appeared. Aaron Burr made an attempt at it and the Clintons practically succeeded. The state has at various times been ruled by such potentates as Martin Van Buren, Silas Wright, Thurlow Weed, Thomas B. Platt, David B. Hill, and William Barnes. In Pennsylvania, the first generally recognized boss was Simon Cameron, whose mantle descended on Matthew Quay, and from him to Boise Penrose.

The methods of all these leaders were the same, namely, to secure political control of the state by putting a multitude of people under obligations of various kinds, often quite innocent (*see* MACHINE, POLITICAL); then from this cohort of attached friends to designate members of the legislature, and of Congress, state officers, and the small body of highly skilled workers commonly called the organization (*see*). Through these people most of the political heads themselves got high office and maintained themselves by distributing offices and advantages of all kinds.

This system worked particularly well in states like New York and Pennsylvania containing very large cities, and usually Philadelphia has had a local boss who worked with the Republican rulers of the state; and New York City has had a succession of local bosses, as Fernando Wood, William M. Tweed, John Kelly, Richard Croker and Charles F. Murphy, who have controlled the Democratic machine. In 1911 the bosses of Philadelphia were overthrown, though in the elections of 1913 they regained their power; and in 1912 Senator Penrose lost control of the Republican organization of Pennsylvania.

The great cities of the middle states have furnished object lessons rather for instruction than for imitation in their local government; but on the whole they are working into better conditions. The charters and administration of New York City, Jersey City, Philadelphia, and Pittsburg, have been much improved, and compare well with those of the large western cities.

Intellectual.—On the intellectual side of life the middle states have been dominated by New York City, which draws to itself the rising lights in art, and literature, and most of the ablest professional men. Each of the three great middle states has a fair public school system, with very numerous high schools. There are many endowed colleges of which the largest, oldest, and strongest, are Columbia, University of Pennsylvania and Princeton.

There are also public agricultural, and technical colleges, of which Cornell and Lehigh are the most renowned.

See AMERICAN GOVERNMENT AND GEOGRAPHY; BOUNDARIES OF THE UNITED STATES, INTERIOR; COLONIZATION BY GREAT BRITAIN IN AMERICA; INDIAN POLICY OF THE U. S.; MIDDLE WEST; NEW ENGLAND; PHYSICS AND POLITICS; PHYSIOGRAPHY OF NORTH AMERICA.

References: N. S. Shaler, *United States* (1894), I, 61–69; A. P. Brigham, *Geographic Influences in Am. Hist.* (1903); E. C. Semple, *Am. Hist. and its Geographical Conditions* (1903); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 96, 165, 200–203; references to state histories in *ibid*, § 37.

ALBERT BUSHNELL HART.

MIDDLE WEST. "Middle West" has been applied of late years to those states between the Appalachians and the Mississippi, north of the Ohio; that is Ohio, Indiana, Illinois, Michigan, and Wisconsin. This region has an area of 294,000 square miles; and the total population in 1910 was 18,250,261.

Topography and Products.—The Middle West is substantially the eastern upper valley of the Mississippi river, and is everywhere comparatively level, though southern Ohio and Indiana are cut into a hilly country by streams descending to the Ohio, and central Wisconsin is undulating. Nearly the whole area is capable of cultivation and west of Indiana most of it is prairie. The Middle West is in one of the broadest, best watered, and most fertile regions in the world. It includes a glaciated area bounded by a line running through southern Ohio, southern Indiana, and southern Illinois, which constitutes one of the famous wheat areas of the world. South of it lies the corn belt occupying central Illinois, in which farm lands employed for this staple crop command as much as $250 an acre. Almost all parts of the Middle West abound in small fruits which in many localities make a profitable industry. In every state, dairying is active; and great attention is now given to this branch of farming.

This is also a region of mining and manufactures. Coal is abundant in the states south of Michigan. Lead is mined in southwest Wisconsin and northwest Illinois. Oil and gas wells are numerous in the eastern and southern parts of the area. The abundant and cheap fuel has stimulated the iron industry, which has two flourishing centers, one around Youngstown and Cleveland, Ohio, and one south of Chicago. The eastern and northern part was, until a few years ago, heavily wooded, and the seat of a heavy lumbering industry.

Transportation.—No part of the world has better natural and artificial transportation. The great lakes enclose the Middle West on the northeast. The Ohio river is its southern boundary, and the Mississippi and its tributaries serve the west. Hence it was easy to open up the country by primitive water transportation and later by steamboats. It is also easy to build railroads, and the section has an almost unrivaled network radiating from the principal cities, Cleveland, Columbus, Cincinnati, Indianapolis, Chicago, St. Louis, Milwaukee, St. Paul, Minneapolis, and Superior and Duluth. In addition several states, particularly Ohio and Indiana have built up interurban trolley systems (*see*) which are substantially light railroads carrying express and freight as well as passengers.

Population.—The Middle West is the part of the United States in which is found the greatest variety of race elements. Originally it was settled by two currents of population of English strain—one from New England and New York and the other from Maryland, Virginia and North Carolina. A division line between those two elements can still be traced. There is also a French strain derived from eighteenth century settlers in Wisconsin and farther south and southeast. A considerable number of the Indians live on reservations within these states, particularly those farther west. In every state there is a negro element which along the Ohio river is a notable part of the total population.

The greater number of non-English people have come in as emigrants since 1830. There were living in the middle west in 1910, 791,000 Germans; 320,000 Scandinavians; 180,000 Irish; 307,000 Slavs of various races; and 1,469,000 of other foreign origin—a total of 3,067,000 which is about 17 per cent of the whole population. The children of foreign parents were 5,108,000; so that in round numbers nearly one half of the people of the Middle West are of recent continental origin.

Intellectual.—Notwithstanding the composite character of the population, it is very intelligent and deeply interested in education. Every one of the Middle Western states, from its entrance into the Union, has had a system of public common schools. Academies and colleges were founded immediately, and all these states now have a system of public education from the kindergarten to the graduate and professional schools of large state universities, all supported by public taxation, managed by public officials, and knit together as an organization.

Alongside this public education is a large body of private schools, mostly church schools, some Catholic and some Protestant: and another body of endowed colleges originally denominational as some of them still are, but in many cases now quite nonsectarian. The 11 public institutions of higher learning number 21,000 students; and 102 private institutions have 26,000 students. Nearly one-half of the students are women, for coeducation began in the Middle West, and has extended to nearly all public and private colleges, and to

the public secondary schools. In most western cities there is a body of literary and artistic people.

Political.—The Middle West has made experiments in government. The Northwest Territory (*see*) had the first constitution put in force in that region; and every part of the Middle West has at some time been a territory of the United States. The western states as they came into the Union put in practice new democratic ideas. The extension of the electoral franchise, till it became practically manhood suffrage was worked out in the West. The principle of equal electoral districts was first carried out in the West. The composite system of county government, which uses both the town and the county as governmental units is a western adaptation of Pennsylvania and New York methods. The Middle West was for a long time the chief section in which unnaturalized aliens were allowed to vote. The West began and has carried through the election of judges. In recent years from the West has come a series of new political methods, such as the state-wide primary, and popular designation of United States Senators.

Through its large population and its central position, the Middle West has come to take a dominant position in national politics. As early as 1829 Jackson, who was substantially a western man, became President; and since 1861, with the exception of one President from Tennessee, Johnson, three Presidents from New York, Arthur, Cleveland, and Roosevelt and Wilson, born in Virginia, every President of the United States has come from that section. The Progressive (*see*) movement, which became portentous in 1910 and convulsed the Republican party in 1912 had its origin there.

The region has from the first been interested in politics. Most of the first group of states were organized just as the old political parties were dying out, but it was sharply divided between Whigs and Democrats. Thomas Ewing of Ohio, was one of the leading Whigs of the country; William Henry Harrison strongly identified with Ohio (though born in Virginia) was a Whig (*see*) President. Cass of Michigan and Douglas of Illinois, were wheel horses of the ante-bellum Democratic party (*see*). It was not an accident that the name Republican party was first adopted in Michigan; and that Chase of Ohio, Morton of Indiana, Washburne of Illinois, and Wade of Ohio were founders of the party; nor that Abraham Lincoln of Illinois was the first Republican President.

The Middle West has recently become especially interested in efficient government. Into the western cities have entered many abuses, and the rural and state governments have often been corrupt. Strong influences are now attempting to cure these evils; extraordinary public interest has been aroused in the governments of Chicago and other large cities. Commission government for cities began in the South, but was quickly taken up in the Middle West, and has run through scores of communities.

See American Government and Geography; Boundaries of the United States, Interior; Conservation; Far West; Frontier in American Development; Middle States; Physiography of North America; Public Lands and Public Land Policy; Territories of the United States, Organized; West as a Factor in American Politics; and states by name.

References: N. S. Shaler, *The United States* (1894), chs. iii, v; J. D. Whitney, *The United States* (1889); list of histories of the states in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 37; bibliography in *ibid*, §§ 168, 193, 201; A. B. Hart, *Manual* (1908), § 32 (lect. 9), § 38 (lect. 34).

Albert Bushnell Hart.

MIDNIGHT JUDGES. A disparaging nickname bestowed by the Jeffersonian Republicans, in 1801, upon the judges whose commissions were signed by the retiring President, John Adams, just before midnight, March 3. It was again applied by the Whigs to the judges appointed by Martin Van Buren at the close of his administration, March, 1841. O. C. H.

MIDWAY ISLANDS. Midway or Brooks Islands, discovered by Captain Brooks in 1859 and annexed by the United States in 1867, are situated about 1100 miles north-west of Honolulu. They are a group of four small, low islands, the largest but one and three-quarters miles long by three-quarters of a mile wide, which are protected from storms by an encircling coral reef, through which there is a dangerous ship channel. They have a constant supply of good drinking water, but scant vegetation; for the most part the surface is covered by drifting coral sand. Since 1903 they have been used as one of the intermediate repeating stations of the American-Pacific cable which stretches from San Francisco to Manila. The sole occupants of the group, which is under the administrative control of the Navy Department, are the employees of the cable company and a few marines. **References:** Martin Crook, "Our Cable Station in Mid-Pacific" in *National Magazine*, XXI (1905), 385–396; J. B. Monroe, *Digest of Int. Law*, I (1906), 555. G. H. B.

MILAN DECREE. On May 16, 1806, the British Government, by Orders in Council (*see*) declared the European coast from the Elbe to Brest under blockade. Napoleon then issued the Berlin Decree (*see*) by which, on November 21, 1806, he proclaimed Great Britain under blockade and continental ports closed to British trade. Great Britain issued further Orders in Council January 7, and November 11, 1807, which were followed by Napoleon's Milan De-

cree of December 17, 1807, "denationalizing" ships that had submitted to British authority, and proclaiming the British islands blockaded. President Jefferson, in transmitting this decree to Congress said:

> New decrees and orders taken together, want little of amounting to a declaration that every neutral vessel found on the high seas, whatsoever be her cargo, and whatsoever foreign port be that of her departure, or destination, shall be deemed lawful prize.

See BERLIN DECREE; CONTINENTAL SYSTEM; FRANCE, DIPLOMATIC RELATIONS WITH; NEUTRAL TRADE DURING NAPOLEONIC WARS.

References: E. Channing, *Jeffersonian System* (1906), 199; H. Adams, *Hist. of the U. S.* (1890), IV, 126; J. D. Richardson, *Messages and Papers of the Presidents* (1896), I, 421 *et seq.* G. G. W.

MILEAGE OF LEGISLATORS. In fixing the pay of legislators a universal practice in the United States is to provide that in addition to their regular salaries they shall receive compensation in the form of "mileage," the amount being fixed at a certain sum for each mile travelled by the nearest route usually travelled in going to and returning from each regular session. The amount is in some states fixed by the constitution; in others it is left to the discretion of the legislature itself. The mileage of members of Congress is fixed by statute, the amount now (1912) being twenty cents per mile going to and returning from each regular session. Congress has refused to appropriate for mileage where sessions of the same Congress have merged. In 1893, the comptroller ruled that the act of 1886, providing for the allowance of mileage to members of Congress, applied only to regular sessions and not to extra sessions. In 1909 the Sixty-first Congress met in special session in March, some days after the end of the Sixtieth Congress, March 4. In the deficiency act, passed in the last session of the Sixtieth Congress, appropriations were specifically made for the "first session" of the Sixty-first Congress (*Statutes at Large*, XXXV, 932). At the same session appropriations were made in the usual form for mileage, under the comptroller's decision, for the regular session of the Sixty-first Congress (*Statutes at Large*, XXXV, 845–850). **Reference:** A. C. Hinds, *House Manual* (1909), § 86. J. W. G.

MILITARISM

Europe.—Militarism is based upon the doctrine that the cultivation of the arts of war and the warlike spirit makes a nation great, and that national power and prestige are best maintained by large armies and navies. It therefore promotes military sentiment among the people and in general urges martial efficiency as the paramount interest of the state. As early as 1864 the word was referred to as that "disease of modern times known under the sinister name of militarism" and has usually been employed in its derogatory sense ever since. At the present moment in practically all civilized nations, we have the seeming paradox of an unwonted growth of militarism together with an equally vigorous growth of pacifism, of preparation for war and preparation for peace, of great armies and large navies, and of Hague Conferences and Courts.

The great standing armies of today, still less the navies, were hardly dreamed of until the nineteenth century. The renaissance of learning, the new inventions in science, the growing wealth of nations and the consolidation of states, etc., have all conspired to render it possible for nations to put into commission armies and navies hitherto unprecedented in numbers, training and equipment. Since 1875, military expenditures have increased out of all proportion to population. Jean De Bloch, whose volume *The Future of War* is said to have suggested the calling of the first Hague Conference, has made the following table of the percentage of increase of military expenses for the great Powers of Europe between 1874 and 1896.

Country	Per cent	Country	Per cent
Germany	79	France	43
Russia	75	Italy	27
England	47	Austria	21

United States.—In the United States, the growth of militarism is as significant as in Europe, despite geographical isolation, freedom from "entangling alliances" and old world hatreds. From 1879 to 1909, 71.5 per cent of the income of the United States has been spent for wars past, present and future. The total annual appropriations for the United States Army and Navy are for the ten years 1900–10 as follows:

Year	Navy	Army *
1900	$48,099,969	$257,602,135
1901	65,140,916	269,936,925
1902	78,101,791	243,611,475
1903	78,856,363	233,880,095
1904	81,876,791	241,894,735
1905	97,505,140	228,967,985
1906	100,336,679	229,581,305
1907	102,091,670	238,388,575
1909	122,663,885	287,570,315
1910	136,935,199	344,292,337

* Including pensions.

The report of the Massachusetts Commission, in 1910, on the cost of living states that during the entire life of the republic the Unit-

ed States has spent for all purposes the sum of $21,518,871,351—of which $16,567,677,135 was devoted to militarism. That is about $3.00 out of every $4.00 was spent on war or preparation for war—a sum exceeding by three billion dollars the entire gold production of the world since the discovery of America by Columbus.

There are many causes contributory to the growth of militarism. Though some of them are to be condemned from any point of view, others are obviously inocuous or beneficial.

Rivalry in Armaments.—Probably the most important of all the causes of militarism is national rivalry in armaments. This rivalry is increased by all the artifices of the scaremonger, yellow journalist, war-bogey politician and ordnance lobbyist. Next in importance are the army and navy cliques whose numerical strength and social connections give them a tremendous influence with monarchs, ministries, parliaments and public opinions. Kings and nobles don uniforms for the most important court functions, while younger sons of the aristocracy and political favorites are given easy berths in the army and navy at the government's expense. The relation between militarism and monarchy is so close that many pacifists argue that the army is more a foe of democracy and a bulwark of privilege than a national defense from enemies without.

Manufacturers.—Next to the army and navy itself come the ordnance manufacturers. Their influence is almost altogether bad. They are the ones who put up the money for the lobbyists that infest parliaments and for the press agents who start the war cries. Members of the federal Congress have publicly stated that the Japan war clouds always thicken just when the military appropriation bills come before Congress. In 1913 all Germany was stirred by sensational charges against the Krupps, to the effect that they manufactured panics as well as guns.

Place Hunters.—The desire of members of Congress to procure for their constituents army posts and naval stations is another cause of the growth of military expenditures. Repeatedly attempts have been made by the War and Navy Departments to abolish these needless sources of expense, but in practically every case it has been without avail. New Orleans (1912) raised a sum of $20,000 to prevent Congress from abolishing a naval station at its port.

Finances.—The financiers or international money lenders are also a most powerful class who have much to gain from military expenditures. It is generally known that these men could stop almost any war by refusing to lend money to governments for wars and military purposes. Indeed such an eminent banker as James Speyer of New York City has suggested that money itself should be made contraband of war. President Jordan of Leland Stanford University writes that the "The unseen empire of finance has already absorbed and distributed $26,000,000,000 of war loans for the states of Europe. On this sum the people pay $1,150,000,000 each year in interest."

Military Societies.—So much for the principal agencies directly engaged in getting larger military appropriations. In addition to these are others whose primary purpose is to create a public sentiment throughout the land in favor of militarism and military ideals. Of these the army and navy leagues are perhaps the most active. These leagues are already established in many nations and are very powerful. They are organized to stimulate interest in the army and navy, and to combat pacifism. The navy league of Germany for instance, has nearly a million members.

The Grand Army of the Republic, the United Confederate Veterans, and the militia, the military drills in our agricultural and private schools and the Boy Scouts are all aids in spreading the military spirit far and wide. We may mention, also, in this connection, the patriotic societies, fraternal orders, the school children's salute of the flag, the custom of standing when the national anthem is played, and the Salvation Army. The Grand Army of the Republic is revered by the nation and given every honor by the Government. It has 6,035 local posts and 213,901 members. The United Confederate Veterans number 55,000. The militia since the Dick Law of 1903 went into effect is now for all practical purposes a part of the regular army. It has become fashionable for young men to enter the militia, whose peace strength is now as follows:

	Regiments	Officers	Men
Infantry	140	6,370	91,056
Cavalry	5	240	3,640
Artillery	8	257	4,315

Land Grant Colleges.—The 68 colleges of agriculture and the mechanic arts, one or more in each state, receive federal aid on condition of giving military drill and instruction, usually under United States Army officers. In 1910 there were 22,744 young men taking military drill in these "land-grant" colleges. The national board for the promotion of rifle practice reported, in 1909, that rifle clubs had been founded in 26 colleges and universities and 60 high schools and academies of United States.

Boy Scouts.—The Boy Scouts were organized in 1908 by General Sir Baden Powell in England. The English movement was supposed largely to prepare the British youth for the national defense. Consequently, military tactics, were interspersed with games and Indian law. The 250,000 or more Boy Scouts in the United States, however, are not primarily a military organization.

Patriotic Societies.—The score or more of patriotic societies in the United States are

numerous, influential and flourishing and do much to emphasize the martial glories of history and so to cultivate the military spirit.

Propaganda.—Other powerful aids to militarism are those school textbooks which generally overemphasize war and its glories, and yellow journalism which knows that a war scare sells "extras." These of course exert a profound influence on the youth and the ignorant.

Pacifist Movement.—The anti-militarist or pacifist movement is as active as the militarist movement. It has appeared in its most extreme form in France where the propaganda has been closely associated with the revolutionary trades union movement of the General Confederation of Labor. Young recruits about to enter the army are lectured on the duty of mutiny in case of war and urged to fire upon their officers rather than upon the enemy. Workmen employed in the navy yards and arsenals have been guilty of acts of *sabotage* or wilful injury to property or product, such as loading shells in such a way that they will not explode. Plans have been openly discussed for the disabling of the country at the moment of a declaration of war by the cutting of railroad and telegraph lines and the ordering of a general strike. The Socialists of Germany though sympathizing with the anti-militarist movement and though always opposing, in the Reichstag, the increases of armament demanded by the Government, have been more cautious in their utterances than their French brethren and have steadfastly refused to commit themselves to any international agreement for a general strike in case of war. In England the spirit of militarism has been in the ascendent for the last few years on account of the supposed danger of an invasion from Germany. At one time the public was greatly alarmed by the rumors of the discovery of German fleets, German spies and German airships in various parts of the country, and a play, "The Englishman's Home," presenting a distressful picture of British unpreparedness for defense, increased the excitement. The Liberal government was forced by public opinion to expand its naval programme and had difficulty in securing parliamentary approval for the Declaration of London (*see*), an international agreement on neutrality authorized by the Hague Conference. Universal conscription has been advocated; enlistment in the volunteer territorial force has become popular; and officers' training corps are organized in all the universities.

Progress of the Peace Movement.—The United States is now the leader in the peace movement of the world. Most of the separate peace societies, now numbering about 70, are extremely active and embrace in their membership the leading thinkers and philanthropists of the land. The churches, the workingmen, the universities, the chambers of commerce, the learned professions and, in fact, all classes are also committed to the cause of pacifism. Above all the Government itself has taken up the cause.

The peace movement, as it is now coming to be recognized, is simply the method of substituting law for war, right for might. Until some sort of a plan for the "federation of the world" is adopted each nation must use force as a last resource to preserve its own independence and sovereignty. So we may expect militarism to continue until international law has so developed that means other than war will be employed to settle international differences and to determine the destinies of the nations and the races.

For the propaganda against militarism, there are now several agencies in the United States. The American Peace Society, founded in 1815, issues bulletins and influences public opinion. Mr. Edward Ginn of Boston has founded a trust fund of $1,000,000 to be used in the cause. Andrew Carnegie has created the Carnegie Endowment for International Peace with an endowment of $10,000,000, with headquarters in Washington.

See ARMIES AND NAVIES, FOREIGN; ARMY, STANDING; IMPERIALISM; MILITARY AND NAVAL EXPENDITURES; PENSIONS.

References: D. S. Jordan, *Human Harvest* (1907); J. De Bloch, *Future of War* (1903), 128–146; *Peace Year Book*, 1913, 42, 46; *Navy Year Book*, 1911, 721, 789; E. Atkinson, *Facts and Figures* (1904), 139–202; B. von Suttner, *Lay Down Your Arms* (1905); F. Lynch, *Peace Problem* (1911), 113–127; A. T. Mahan, *Some Neglected Aspects of War* (1907), 21–115; C. Sumner, *Addresses on War* (1904), 1–133; H. Holt, "Dawn of the World's Peace" in *World's Work*, March, 1911; B. F. Trueblood, *Cost of War* (1907), *Syndicates for War* (1911), Am. Assoc. for International Conciliation. *Publications*; Massachusetts Commission on Cost of Living, *Waste of Militarism* (1910); A. L. Guerard, "Impressions of Military Life in France" in *Pop. Sci. Monthly*, April, 1911.

HAMILTON HOLT.

MILITARY ACADEMY AT WEST POINT. Founded in 1802 as an adjunct to the Corps of Engineers of the United States Army, this institution has educated officers for all branches of the military service for more than a century. Since 1866 it has been under the direct control of the Secretary of War. Candidates are appointed from all the states upon the recommendation of Senators and Representatives in Congress; and there are now over 500 cadets taking the course of instruction for four years. The faculty is composed of 100 officers, including 11 permanent professors holding military rank. Up to 1911 the graduates numbered 5,016; and those now in service constitue nearly half of the 4,300 officers of

the line and staff of the Army. The Military Academy is provided for by a separate appropriation bill, the annual appropriation varying with the number of cadets, who receive regular pay, and the allowance for public works. The plan of improvement and reconstruction authorized in 1904 may require $10,000,000 for its completion. The pay of instructors and cadets amounts to nearly $700,000 a year. See ARMY, STANDING; EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATION, MILITARY AND NAVAL; OFFICERS, MILITARY AND NAVAL. References: G. W. Cullum, *Biographical Register of Officers and Graduates of the U. S. Military Acad.* (3d ed., 1891); *Centennial of the U. S. Military Acad.* (1904); E. Upton, *Military Policy of the U. S.* (1907), 90, 94, 236–241; U. S. War Department, *Annual Reports, 1899–1903* (1904), 130, 281, 359; *ibid* (1908), IV; (1910), I, 27, 57; *Military Laws* (1908), 542–562, 1237–1239; *Register of the U. S. Military Acad.*, 1912.

C. G. C.

MILITARY AND NAVAL EDUCATION. See EDUCATION, MILITARY AND NAVAL.

MILITARY AND NAVAL EXPENDITURES. **From 1789 to 1816.**—Taxation for military purposes was unpopular for a generation after the creation of defensive armaments was authorized by the Constitution of the United States (Art. I, Sec. viii, ¶ 12, 13). General poverty and opposition to the enlargement of the powers of the national Government helped to strengthen the prejudice against standing armies. For seven years prior to 1798 the total granted to the Army was $10,000,000, and the Navy was founded with $1,500,000. The war of reprisals with France, in 1799, brought the aggregates for a four years' administration up to $8,710,292 and $9,799,570 respectively; but the figures fell to $3,590,409 and $4,918,125. In anticipation of war the annual appropriations were increased, and in 1809 stood at $3,345,772 for the Army, including $1,200,000 for fortifications, and $2,487,758 for the Navy. The total cost of armaments from 1791 to 1811 was $63,000,000. The cost of the Army, including militia and volunteers, for the five years ending in 1816 rose to $82,627,990, while $30,285,534 was the cost of keeping the Navy on a war footing for the contest with Great Britain. A pension account of $45,853,024 grew out of this war; and large tracts of public land were also distributed to the survivors and their heirs (*see* BOUNTIES).

From 1816 to 1860.—For nineteen years of peace the military and naval expenditures were $90,000,000 and $66,000,000 respectively; but the cost of the Army was nearly doubled after 1835, $69,751,611 being expended during the seven years of the Florida War, with $45,280,724 for the Navy. During the next three years the naval expenditure was the larger; but the Mexican War required $88,500,208 for the Army in four years, during which the Navy cost $33,550,831. Up to 1911 the pensions for this war amounted to $45,279,686. The pay of the regular troops was about $5,000,000, of the volunteers about twice as much. In 1842 the cost of the fleet, which then included 5 ships of the line and 11 frigates, 2 of them steamers with 34 smaller vessels, was $14,631,984, of which 40 per cent was spent in repairs. In the time of sails and cast-iron guns the cost of construction and armament was not high; but the expense of maintenance was constantly increasing. The advent of steamers armed with guns capable of firing shells disturbed calculations both afloat and ashore; and large sums were demanded for harbor defence (*see* FORTIFICATIONS).

For the eleven years ending in 1860 the military expenditure, including large sums spent on fortifications, aggregated $168,079,607, reaching a maximum of $25,679,121 in 1858 on account of the Utah expedition. The Navy had received $127,874,500; and for 1860 the military and naval appropriations were $16,472,202 and $11,514,649 respectively. These figures made the cost of armaments 44 per cent of the total expense of the general government, or 80 cents per capita. The United States Army had 16,367 officers and men in 1860, with 183 out of 198 companies serving on the western frontiers. Great Britain was then maintaining an army of 122,655 men, exclusive of the forces in India; and her military estimates ran to $2.20 per capita.

Civil War.—The expenditures of 1861 were out of all proportion to the regular appropriations. The cost of the Army was $389,173,000 for 1862, $603,314,000 for 1863; $690,391,000 in 1864; and $1,030,690,000 in 1865. The naval expenditure for the four years was $314,223,000, the increase over the appropriation of 1860 averaging 600 per cent for the Navy and 3,000 per cent for the Army. These figures do not include the expenditures of the states for bounties, etc., which were finally paid by the Treasury Department. With these the total cost of the war was reckoned in 1879, at $6,190,000,000. Hardly a tenth of the pensions had then been paid; but by June 30, 1911, a total of $3,985,719,836 had been paid to pensioners of the Civil War. Interest on the public debt should also be reckoned among the charges "on account of wars past."

From 1866 to 1897.—The services were reduced to a peace footing in 1866, after an additional $283,154,000 had been spent for the Army and $43,285,000 for the Navy. For the next four years a total of $354,626,000 was granted for the Army, and the Navy got $98,589,000. For the next decade the military appropriations averaged $38,617,000, of which a tenth or more was devoted to the improvement of rivers and harbors, and the naval allowance was $19,658,000. There was little

change up to 1890; but during the next seven years both services were armed with steel rifled cannon, new fortifications were begun, and some progress toward the construction of an armored fleet was made. The average expenditures to 1897 were $50,201,000 and $29,661,000 respectively. The total pension bill had passed the cost of the Army in 1880, and that of both services in 1883; and it still outran their expenditures in 1897, when the appropriation was $141,053,000.

Spanish War.—For the war with Spain and the subjugation of the Philippines, from 1898 to 1901, the appropriations were $601,232,000 for the Army and $297,063,000 for the Navy. Pensioners for these wars received $34,143,000 prior to June 30, 1911; and a large part of the $21,706,000 paid to soldiers disabled in the regular Army belongs to this account. The military occupation of the Philippines since 1899 has cost $167,000,000 besides the pay and subsistence of the troops.

Expenditures since 1901.—For the decade ending June 30, 1911, the aggregate expenditure for the military establishment is reckoned as $1,086,449,778 including $71,173,527 for fortifications, $37,125,403 for military posts, and $14,610,581 for the Military Academy. Naval expenditures aggregated $1,105,585,807 for the same period, including $307,758,122 for the increase of the fleet. The total spent for construction and armament in 30 years after 1883 was $449,184,352, of which over $36,000,000 was spent on vessels unfinished on June 30, 1912. For the further increase of the Navy the appropriations for the next two years were $20,569,373 and $35,325,695, respectively.

Analysis of recent appropriation bills shows that the Army requires $45,000,000 annually for pay, and $9,000,000 for subsistence; the quartermaster's department spends $40,000,000 more; and the total of $94,000,000 is thus required for maintenance. To this should be added $9,000,000 for fortifications at home and abroad, the grant of $4,000,000 for the militia; and the appropriation for West Point. From a naval appropriation of $126,500,000 there has to be subtracted $39,000,000 for pay, $7,500,000 for rations, $12,000,000 for repairs, $10,000,000 for guns and ammunition, $5,000,000 for a million tons of coal, and $7,500,000 for the support of the Marine Corps. The maintenance of 14 navy-yards and 21 other stations at home and abroad averages $12,251,954, and their total cost prior to 1910 was $320,613,796. The balance of the annual naval appropriation is applied to the increase of the Navy in payment for ships expressly authorized by Congress. The amount varies from year to year but averages about $30,000,000. It is obvious that the proposal to limit military and naval expenditures to $100,000,000 for each service cannot be harmonized with any estimate of the cost of maintaining the existing organization and supplying such armament as may be required to keep pace with technical progress.

Competitive Expenditure.—A vast increase of expenditures for military purposes dates from 1898, the year of the discussion of the reduction of armaments at the Hague Conference; and the United States joined the competition between nations by doubling the appropriations for the Army and Navy after the Spanish War. Great Britain now spends $133,468,000 and $219,024,000 on these services; Germany, $199,404,000 and $107,515,000; France $175,309,000 and $81,522,000; Italy, $70,256,000 and $40,933,000; and Japan, $37,305,000 and $42,958,000. Several countries have doubled their naval estimates since 1902 in order to build dreadnoughts for their fleets. The increase in military expenditures from 1900 to 1912 was 32.5 per cent; in naval, 75 per cent; and for combined armaments, 45 per cent, for the eight leading powers. While all maritime nations are rapidly enlarging their fleets, the most notable increase in military expenditures in the estimates for 1914 is that required by the proposed reinforcement of the armies of Germany and France, for which new methods of taxation have to be devised. The per capita cost of all armaments is about $7.69 for Great Britain, the colonies not contributing to imperial defense, though some of them are building navies on their own account; $4.75 for Germany; $6.50 for France; $3.18 for Italy; and $1.54 for Japan. Making no allowance for the tax imposed by compulsory service, a British soldier costs $500 a year, of which $104 are his wages; a German soldier costs $325, being paid only $18; and an American private costs $1000, of which his pay is not less than a fifth. In comparison with national wealth the per capita charge of $2.45 for defensive armaments in the United States appears moderate, though it constitutes over one-third of the expenses of government. Taking the pensions and interest on war debts into account, the expenditure of the United States for "wars we have had and wars we are preparing to avoid" exceeds that of any other power. Comparisons of naval expenditure based on the tonnage of merchant shipping show that the American rate of insurance is high, but if reckoned according to maritime trade it does not exceed a fair average.

See APPROPRIATIONS, AMERICAN SYSTEM OF; ARMY, STANDING; BOUNTIES TO SOLDIERS AND SAILORS; COAST DEFENSE; COST OF GOVERNMENT IN THE UNITED STATES; EDUCATION, MILITARY AND NAVAL; EXPENDITURES, FEDERAL; MILITARISM; OFFICERS, MILITARY AND NAVAL; PENSIONS, MILITARY AND NAVAL; RETIREMENT OF MILITARY AND NAVAL OFFICERS; WAR, CARRYING ON.

References: N. Angell, *Great Illusion* (1910); J. de Bloch, *Future of War* (1903), Pt. VI; E. Crammond, "Expenditure on Arma-

ments" in *Quart. Review*, CCXVI, January, 1912, 224–247; D. R. Dewey, *Financial Hist. of the U. S.* (1907), 115, 267, 329, 399, 428, 475; I. Hamilton, *Compulsory Service* (1911), 203, 209; W. R. Lawson, *Modern Wars and War Taxes* (1912); W. Pulsifer, *Navy Yearbook, 1912*, and year by year; F. S. Roberts, *Fallacies and Facts Relating to Compulsory Service* (1911), 82–84; E. Upton, *Military Policy of the U. S.* (1907), 141, 191–193, 221, 224; Royal United Service Institution, *Journal*, 1911, 507; J. E. Barker, "Armament Race" in *Fortnightly Review*, DLVI (April, 1913); U. S. War Department, *Annual Reports*, 1918, I, 62; 1911, II, 226; 1910, I, 55–64, 669; U. S. Navy Department, *Annual Reports*, 1910, II, 31; *Cong. Record*, 60 Cong., 1 Sess. (1908), 5083–5087; 61 Cong., 2 Sess. (1910), 9745, 9746; 61 Cong., 3 Sess. (1911), 1006; Appendix, 234; 62 Cong., 2 Sess. (1911), 220, 479–482, 607. C. G. CALKINS.

MILITARY AND NAVAL OFFICERS, RETIREMENT OF. See RETIREMENT OF MILITARY AND NAVAL OFFICERS.

MILITARY COMMISSIONS. To enforce the restraints of martial law by the trial and punishment of offenders, military commissions have been constituted under the law of war in all the wars in which the United States has engaged since 1847. The burning of bridges and other acts of guerrilla warfare led to the employment of these tribunals in 1861, and they were continued until 1865 "for the punishment of public crimes in regions where other courts had ceased to exist." Political prisoners in some northern states were also tried by military commissions during the Civil War; and those implicated in the plot which led to the assassination of President Lincoln and the commander of Andersonville prison were condemned by such tribunals after the close of the war.

In reviewing the Milligan case, tried by a commission in Indiana, in 1864, the Supreme Court (4 *Wall.* 2) decided (December, 1866) that it was illegal to try a citizen of that state, where the national authority was unopposed, by a military commission. Nevertheless the Reconstruction Act (*see*) passed in March, 1867, authorized commanders of military districts to employ military commissions to repress "disturbers of the public peace and criminals" in the states lately in rebellion. During the invasion of the Philippines and Porto Rico in 1898 various offenses committed by inhabitants of those countries were tried by military commissions.

Martial law having been proclaimed in certain striking mining districts of West Virginia during 1913, the governor directed the trial of offenders by military commissions. This procedure was approved by the highest courts of that state (*Ex parte Jones*, 77 *S. E.* 1029, March 21, 1913); but being called in question in the Senate of the United States, it was proposed to investigate its legality and justice, and thus ascertain the limitations of state authority in that direction.

Though military commissions have been recognized in certain statutes of the United States their constitution, composition, and procedure have been regulated by law. It has been the custom to assimilate them to courts-martial; but the latter are the only tribunals authorized to try military offenses committed by persons serving in the Army or Navy.

See COURTS MARTIAL; MARTIAL LAW; MILITARY LAW; RECONSTRUCTION.

References: U. S. War Department, *Military Laws* (1908), 745, 1076; *Official Records of the Civil War* (1880–1901), Series II, I, 281, IV, 857, V, 104, 543, 633, VIII, 696, IV, 449, V, 491; *Annual Reports*, 1899, I, Pt. II, 132, I, Pt. IV, 52, 58; W. Scott, *Memoirs* (1864), II, 395, 540; W. Whiting, *War Powers under the Constitution* (43d ed., 1871), 275, 281, 446, 460; *Ex parte* Milligan, 4 *Wallace* 2 (1867); W. Winthrop, *Digest of Opinions of the Judge-Advocate General* (1901), 462; W. A. Dunning, *Reconstruction* (1907), 22, 89, 94, 256; W. L. Fleming, *Documentary Hist. Relating to Reconstruction* (1906), 401, 440; C. E. Magoon, *Law of Civil Government in Territory Subject to Military Occupation* (2d ed., 1902), 11–19; G. N. Lieber, *Necessity of Martial Law* (1897); *Cong. Record*, 63 Cong., 1 Sess. (1913), 1814–1820, 1935–1950, 1992–1999, 2018–2025, 2107–2110. C. G. CALKINS.

MILITARY DISCIPLINE. Military discipline is a name applied to that condition of subordination to superior control in which all persons composing an army or military organization voluntarily subject themselves to the will and direction of their military superiors—each of whom is acting within the scope and authority of his rank or office in the military establishment. Military discipline has been correctly defined as "the orderly recurrence of events in a military command;" the theory of the definition being that, if there be that subjection of individual will to superior authority, the various details or incidents of service will be carried into effect so intelligently and efficiently as to constitute sound military discipline. See ARTICLES OF WAR; MILITARY LAW.

References: G. B. Davis, *Military Law* (1901), ch. ii; J. F. Morrison and F. L. Munson, *A Study of Troop Leading and Management in Sanitary Service in War* (1910); B. M. Ashburn, *Elements of Military Hygiene* (1909); V. Hayard, *Military Hygiene* (1909); *Am. Year Book, 1910*, 362, 365, and year by year. G. B. D.

MILITARY LAW. Military law is that branch of the legislation of a state which defines the rights, prescribes the duties and reg-

ulates the conduct of the officers and men composing its military establishment; it is a part of the administrative law of the United States and is largely embodied in an enactment known as the *Articles of War* (*see*) and in a number of statutes which have been adopted by Congress from time to time, with a view to the establishment and maintenance of military discipline, under the authority to that end which is contained in the requirement of the Constitution that "the Congress shall have power . . . to make rules for the government and regulation of the land and naval forces" (Art. I, Sec. viii, ¶ 14).

The military law of the United States defines the several military offenses and imposes punishments calculated to prevent their occurrence; it also prescribes rules of conduct applicable to persons holding military rank, vests jurisdiction in the several tribunals to try and to punish offenses in violation of military law, and also regulates their composition, appointment and procedure. Military offenses are violations of the penal clauses of the Articles of War, the principal ones being mutiny, disobedience of orders, disrespect to superiors or the use of violence against them, desertion, absence without leave, neglect of duty, conduct unbecoming officers and gentlemen and the like; certain offenses involving fraud in respect to the public money or property furnished for use in the military service are also made criminal.

Upon conviction of a military offense the court must impose the sentence established by law if such there be—otherwise the punishment is discretionary with the court-martial, subject to the requirements of a system of punishments established by the President in virtue of authority to that end which is vested in him by Congress. The punishments usually imposed are dismissal, dishonorable discharge, confinement with hard labor, fine or forfeiture of pay, suspension from duty, rank, or pay, degradation in military rank and public or private reprimand; for certain of the more serious offenses capital sentences may be imposed, especially in time of war or public danger.

Military law becomes operative, as to a commissioned officer, upon his appointment to military office, and as to an enlisted man upon his admission into the army in the operation of a contract of enlistment; it ceases to be applicable when the officer or soldier has been lawfully separated from the service—as by resignation, discharge, etc. Military law becomes applicable to the militia when it has been called into the military service of the United States in the manner prescribed in the Constitution (Art. II, Sec. viii, ¶ 15); it becomes applicable to volunteers from the date of their acceptance by muster-in; it ceases to be operative as to these forces on and from the date of their muster-out or discharge.

See Courts Martial; Martial Law; Military Discipline; Military Prisons; Soldiers and Sailors, Legal Status of.

References: C. M. Clode, *Military Forces of the Crown* (1869), II; E. Samuels, *Law Military* (1816); London War Office, *Manual of Military Law* (1884); A. F. Tytler, *Military Law* (1814); John O'Brien, *Am. Military Laws* (1846); S. V. Benet, *Treatise on Military Law* (1863); R. A. Ives, *Military Law of the U. S.* (1901); W. Winthrop, *Military Law* (1896); E. S. Dudley, *Military Law* (1908).

George B. Davis.

MILITARY OCCUPATION. In most of the foreign wars of the United States, foreign territory has, at least for the time being, been held by American forces. This was the case in the Canadian campaign of 1775–1776; in some temporary occupations of Canada during the War of 1812; and on a large scale during the Mexican and Spanish Wars. In all cases, where the occupation lasted long enough, the military authorities have assumed the right to regulate or create civil governments though the area within the American lines in Mexico (as held by the Supreme Court in Fleming *vs.* Page, 9 *How.* 603) was still part of the foreign country.

The question whether any of the incidents of military occupation continue after the legal cession of the country occupied, has been differently treated at different times. Such a prolongation is claimed: (1) as a continuance of the law existing just before the cession; (2) as an implied continuance of the cursory authority previously exercised after the cession is completed, until some disposition shall be made by Congress.

The clearest case of assertion of such military authority was in California from 1848 to 1850, upheld by the Supreme Court in Cross *vs.* Harrison (16 *How.* 164). In the Insular Cases of 1900 (*see*), the Supreme Court denied the prolongation of military occupation after the treaty was ratified.

Territory of the United States has been twice occupied by an enemy. (1) During the Revolutionary War, the British held New York City, Newport, Savannah, Charleston, and, for a winter, Pennsylvania. Subsequently, in the case of Rutgers *vs.* Waddington, the New York Courts held that the British had a right to make a temporary disposition of real estate in the city during the occupation. (2) During the War of 1812, the British held for some months the post of Astoria and part of the District of Maine, and the Supreme Court of the United States (U. S. *vs.* Rice, 4 *Wheat.* 246) ruled that the military government set up by the British was a lawful government for the time during which it was in operation.

See California and New Mexico; Dependencies of the United States; Philippine

ISLANDS; TERRITORY, ACQUIRED, STATUS OF; WAR, INTERNATIONAL RELATIONS IN.

References: C. Becker, "Acquisition and Government of Dependent Territory" in Am. Acad. of Pol. and Soc. Sci., *Annals*, XVI (1900), 404; C. E. Magoon, *Reports on the Law of Civil Government in Territory Subject to Military Occupation* (1902); bibliography in A. B. Hart, *Manual* (1908), § 185; W. Whiting, *Military Government of Hostile Territory* (1964).

ALBERT BUSHNELL HART.

MILITARY POSTS. See POSTS, MILITARY.

MILITARY PRISONS. A military prison is a place of detention established by law for the punishment of persons belonging to the army who have been convicted of what are known as "military offenses," that is of violations of the Articles of War, as distinguished from common law or statutory felonies. Prior to 1873 soldiers convicted of such offenses and sentenced to terms of imprisonment were confined in the guard houses at the several military posts throughout the United States; in that year a military prison was established at Rock Island, Illinois, which was subsequently removed to Fort Leavenworth, Kansas, where military offenders are subjected to such instruction and disciplinary restraint as is believed to lead to their reformation. New buildings for prison purposes are now undergoing construction at Fort Leavenworth, Kansas, and at Alcatraz Island, California. See MILITARY LAW; SOLDIERS AND SAILORS, LEGAL STATUS OF.

G. B. D.

MILITARY RESERVATIONS. The Constitution (Art. I, Sec. viii, ¶ 17) gives Congress exclusive jurisdiction over such lands as are purchased with the consent of the legislature of the state in which they are situated for the erection of forts, magazines, or dockyards; and no expenditures of public money are made until such consent shall have been obtained. Offences for which there is no provision in the laws of the United States may be punished by the federal courts according to the laws of the state in which the reservation is situated; and the prosecution is not hindered by the repeal of a state law after the land has been ceded. Statutes providing for the punishment of wanton mischief and the prevention of fires on reservations have been enacted by Congress; and the sale of liquor is also restricted by law. Reservations found to be useless for military purposes may be restored to the public domain by order of the President, who may grant tracts not exceeding 20 acres to municipalities for public use. National military parks have been authorized on five of the principal battlefields of the Civil War; and the Army and the National Guard are allowed to hold manœuvers therein under regulations prescribed by the War Department. The reservation of tracts of live-oak and cedar to supply the Navy with timber have, like those for providing the British navy with spars in colonial times, been found unnecessary, though they are provided for by statutes. See NAVY YARDS; POSTS, MILITARY; PUBLIC LANDS AND PUBLIC LAND POLICY. **References:** U. S. War Department, *Military Laws* (1908), 604–621, ch. xliv, 1244, *Military Reservations* (3d ed., 1910), *Annual Reports*, 1912, I, 501; U. S. Navy Department, *Laws Relating to the Navy* (1898), 480–83, 432–436.

C. G. C.

MILITARY SERVICE, COMPULSORY. The military advantages of an automatic system which makes every class of the population bear a part in national defence are incontestable. Not only does it provide for an ample standing army during peace and perpetuate the military tradition but it provides a practically unlimited reserve of trained soldiers in the prime of life. Thus all the extravagance and disorder of hurried recruiting, the bounties for volunteering and the irritating enforcement of conscription, are avoided. The army is mobilized for war by filling the ranks of the existing organization, without sending improvised regiments or companies to the front; and no command is entrusted to an untrained officer. The superiority of these Prussian methods having been demonstrated in 1866 and 1870, all the continental nations of Europe speedily adopted universal service; and Japan has followed their example with notable success. The Balkan states which engaged in war in 1913 had a more thorough and comprehensive system of compulsory service than Turkey.

Advocates of compulsory service sometimes urge that it produces social subordination as well as patriotic devotion, and that it equalizes the burden of national defence by making the poor contribute. Since substitution is not tolerated, the ranks contain representatives of different social strata. The economic loss due to the maintenance of large armies is considerable, since men are withdrawn from their trades and made to serve with only nominal wages; but it is claimed that the training of recruits improves their physical and intellectual aptitude. For nations with a frontier exposed to attack by land the advantages of compulsory service are incontestable. Great Britain is now urged to follow the example of her neighbors instead of relying upon a voluntary system of recruiting; but this is opposed on the ground that naval supremacy will prevent invasion and that the compulsory system does not prepare troops for colonial or expeditionary service.

For the army of Germany and the nations which adopt her methods recruits are summoned to the ranks at the age of 20 and retained for two years before passing into the reserve. Shortening the term from five to

three and then to two years enables Germany to train a larger proportion of the classes reaching the age of 20 and to maintain a younger active reserve. France now proposes to hold men for three years, exemptions are reduced, and men are kept longer in the reserve with annual periods of training. Other nations vary their methods according to their birth-rate or finances; and Spain still relies upon conscription and admits substitutes. Compulsory service for 60 to 90 days gives Switzerland an adequate national militia.

See Armies and Navies, Foreign; Armies, Standing; Bounties to Soilders and Sailors; Conscription and Draft; Enlistment, Military and Naval; Military and Naval Expenditures; Militia; Soldiers and Sailors, Legal Status of; Substitutes, Military; Volunteer.

References: C. von der Goltz, *Nation in Arms* (1887), 4, 17, *Conduct of War* (1896), 16, 17; K. zu Hohenlohe, *Letters on Infantry* (1889), 23–25; F. Culmann, *L'Armée allemande et l'Armée française* (1908); J. Jaurès, *L'Armée nouvelle* (1911); I. Hamilton, *Compulsory Service* (1911), 11–14, 44, 58, 151–173, 203; F. S. Roberts, *Facts and Fallacies Relating to Compulsory Service* (1911), 145; F. N. Maude, *Tactics and Organization* (1888), 14, 24, *Voluntary vs. Compulsory Service* (1807); H. Cox, "The Demand for Compulsion" in *Edinburgh Review*, No. 444 (April, 1913), 485; "The Military Conspiracy" in *Fortnightly Review*, March and April, 1913, 450, 640.

C. G. Calkins.

MILITIA. Constitutional Provisions.—The Constitution has more detailed provisions for the militia than for any other branch of the military service; the purposes for which it can be called out by the President are specified; "the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress" are reserved to the states; the second amendment asserts the necessity of a militia as the basis of the right to bear arms, thus indicating the connection between the forces organized by the states and the colonial trainbands (Art. I, Sec. viii, ¶ 15, 16, Art. II, Sec. ii, ¶ 1, Amend. II).

Colonial Experience.—Militiamen had driven back the Indians and held the French in check, and contingents had been drafted or hired to assist the British troops in invading Canada and the West Indies. The relation between such forces and the British regulars was unsatisfactory, since the militia resented subordination to British commanders and allowed scanty disciplinary authority to their own officers. The minute-men of 1775 were drawn from the militia; and when they were mustered into the Continental service Washington complained of the slackness of their discipline, the confusion due to their short terms of enlistment, and their subjection to the civil governors of the respective states.

Legislation (1792–1819).—The act for establishing a uniform militia passed by Congress in 1792 was not materially modified until 1903, though most of its clauses had proved ineffective whenever a war had occurred. The requirement that every able-bodied white male citizen should be enrolled in the militia had little practical significance; and the specifications concerning the firelocks and flints of the soldiers and the hangers and spontoons of the officers became obsolete before 1800. Washington had found the old organization a "broken staff," and in 1794 he approved a project adapted by General Knox from the suggestions of Baron von Steuben for a national militia or legionary army. The country was called upon to choose between the German plan of training youths "throughout the community by rotation," in order to diffuse military knowledge, and the British practice of engaging "a militia of substitutes." In 1806 a committee of Congress declared plans for classifying the militia according to age inexpedient; and the failure of the militia organization during the War of 1812 did not prevent a similar report in 1819, when the "camps of discipline" which Knox had proposed were condemned because "The sentiments and habits of a free country necessarily produce amongst the citizens a superior restlessness under restraint than is to be met with among the subjects of a monarchy." It was, however, recommended that the officers and sergeants of the militia should be trained at an annual expense of $157,800 for a force of 250 battalions of 100,000 men.

Constitutional Objections.—The attempt to employ the militia against Great Britain had encountered a great variety of legal and practical obstructions. (1) The Federalists of New England held that the constitutional provision for calling forth the militia "to execute the laws of the Union, suppress insurrections, and repel invasions" (Art. I, Sec. viii, ¶ 15) did not sanction the President's plan for sending such troops to invade Canada. This was overruled by the Hamiltonian plea that the power of Congress to make war included whatever was requisite to success in war; but another constitutional objection was encountered. (2) The judges of Massachusetts advised the governor that, as commander-in-chief of the state militia, he had the sole right of determining when the exigencies prescribed by the Constitution existed. It was also doubted whether "the militia thus employed can be lawfully commanded by any officer but of the militia, except by the President of the United States." These objections were overruled in later test cases before the Supreme Court. Defective organization was even more fatal to the efficiency of the militia than any form of disaffection when the country was actually in-

vaded. Thus in 1814 a force of 5,000 British soldiers laid waste the capital in spite of the nominal presence of nearly 200,000 militia in the national service.

Frontier states were found only too eager to force militia upon the government for campaigns of adventure. The unnecessary and ineffective employment of militia offered by the adjacent states during the later campaigns against the Indians of Florida imposed a heavy burden upon the next generation. In 1845 President Polk directed the engagement of militia for service on the Mexican frontier and planned invasion beyond the Rio Grande without any sanction from Congress.

Civil War.—The supreme test of the militia system took place in 1861 when Lincoln summoned 75,000 troops to restore the authority of the Union. A few organized regiments were recruited for three months' service under this call; but most of the volunteers served under an improvised organization with officers elected by themselves. The governors of the border states (*see*) invoked theories of state rights to justify their refusal to send troops, though large forces were drawn from them at a later period. Even the loyal governor of New York claimed the right to appoint major-generals so as to prevent injury to "the distinctive character of the militia of the states," and a committee of the Senate opposed the incorporation into the same force of volunteers and regulars on the ground that the Constitution had established a distinction between the troops of the states and those of the Union.

A law of 1863 gave the national administration complete control over recruiting the volunteer army by conscription or otherwise; but the states retained the power of appointing regimental officers, who could, however, be displaced by the War Department and not by the governors; and the hospitals of the states were allowed to discharge soldiers on the plea of disability without effective control. Massachusetts had an elaborate militia code and regiments permanently organized; but it was only by great zeal on the part of Governor Andrew, supported by special legislation, that 5,593 men were sent to the front in 1861. The 2,500,000 enlistments of later quotas were organized as volunteers; and except in the state control of the nomination of officers and the consequent multiplication of new regiments, few of the elements of the militia system were observable in the Army after 1862.

1865 to 1902.—No essential modification of the militia and its relations to the general government occurred between 1865 and 1898, though the state forces came to be known as national guards and conformed more closely to the discipline of the regular Army in some of the states. The troops called out for the war with Spain were mustered as volunteers; but many regiments retained the militia organization, and nearly all had officers elected by the men or appointed by the governors of the states. Those who consented to prolong their service in the Philippines until relieved by regulars and United States volunteers were publicly thanked for their "heroic example"; having enlisted only for the contest with the Spaniards.

Act of 1903.—In 1903 a comprehensive measure for making the militia a part of the national forces was enacted; regiments could be mustered in to serve during the war without a new enlistment; and they were to be instructed by regular officers during peace. Standard arms were supplied to all the organized militia by the War Department; and officers were detailed to inspect the militia of different states. In 1910 the fitness of the units for classification was determined, and the total force reckoned as 9,155 officers and 110,505 soldiers. As amended in 1908 the law provides for an annual grant of $4,000,000 for the equipment and maintenance of the militia. The militia pay bill giving officers and men of this force from 10 to 25 per cent of the pay of corresponding grade in the regular Army failed to pass in 1913, though approved by the War Department. The inspection disclosed a lack of uniformity in the militia of different states, and this may be attributed to the constitutional limitation which leaves the appointment of officers and the training of men to the states. It is therefore proposed to provide by law for the creation of a volunteer army not thus restricted. The militia engages in joint manœuvers with the regular Army and in target-practice at the forts in order to qualify as a reserve for the coast-artillery. Naval militia organizations exist in 17 of the states, and their total force in 1910 was 7,000. The Navy Department has assigned 33 armed vessels for their instruction; and they cruise in vessels of the fleet at intervals. A contingent of the naval militia served during the maritime campaign of 1898.

See ADJUTANT GENERAL, STATE; ARMORIES, PUBLIC; ARMY, STANDING; ENLISTMENT; INSURRECTION; OFFICERS, MILITARY AND NAVAL; ORDER, MAINTENANCE OF; REBELLION; RESERVES; RIOTS, SUPPRESSION OF; VOLUNTEER; WAR POWER OF THE PRESIDENT.

References: *Am. State Papers, Military* (1834), I, 6–9, 139, 325, 681, 741; *House Reports*, 45 Cong., 3 Sess., No. 555 (1878); R. A. Alger, *Spanish-American War* (1901), 18, 374, 466; H. Adams, *Hist. of the U. S., 1809–1813* (1890), II, 159–161, 401; L. C. Hatch, *Administration of the Am. Revolutionary Army* (1904), 1–3, 73; F. V. Greene, *Revolutionary War and Military Policy of the U. S.* (1911), 288–296; W. Schouler, *Massachusetts in the Civil War* (1868), I, 15, 21, 667; W. M. Pratt, *Tin Soldiers* (1912); E. Upton, *Military Policy of the U. S.* (1907); W. Whiting, *War Powers under the Constitution* (43d ed., 1871), 67, 205, 479, 508, *Militia Laws of*

the U. S. and Massachusetts (1815), I, 20, 95, 111–120, 125–136; U. S. War Department, *Military Laws* (1908), ch. xxxv, 1247–1260; *Annual Reports*, 1899–1903; 1904, 10, 68, 106, 282–290, 338–358, 487–493; 1908, I, 33–37, 53, 148–155, 321, 322; 1910, I, 48, 52, 57, 94, 107, 128, 132–135, 165, 660–668; 1912 I, 24–27, 122, 147–153, 981; *Regulations Governing the Militia* (1911), *Official Records of the Civil War* (1880–1901), Series I, III; U. S. Navy Department, *Annual Reports*, 1910, 49, 50, 468–471, *Transactions of Naval Militia Assoc.* (1909). C. G. CALKINS.

MILITIA, RESERVE. See RESERVE MILITIA.

MILK SUPPLY. Regulation of.—Milk legislation is a part of public health regulation and usually administered through the health authorities, although dairymen and agriculturists often insist on being represented on boards or commissions to frame or administer laws regulating the milk supply. Rapid extension of such regulations has taken place since 1910, due particularly to the work of special milk committees in the larger cities which have worked out a basic and authoritative definition of clean and safe milk. The National Commission on Milk Standards, appointed March, 1911, by the New York Milk Committee as a result of an important conference in New York, has adopted a uniform standard of scoring milk, which is being widely adopted as follows:

Class A—certified milk or its equivalent, that is, milk produced at dairies subject to periodical inspection and frequent analysis, from cows properly fed, watered and housed, subjected to a tuberculin test and physical examination by a qualified veterinarian, and cared for by persons exercising scrupulous cleanliness and free from the germs of infectious disease. Such milk must not contain more than 10,000 bacteria per cubic centimeter, and must be delivered when not more than 28 hours old.

Class B—inspected milk, namely clean, raw milk from healthy cows subject to tuberculin test and physical examination, from dairies that score not less than 70 per cent on government score card, handled by persons free from germs of infectious disease, delivered in sterilized containers at temperature not exceeding 50 degrees Fahrenheit until it reaches the consumer. It should contain less than 100,000 bacteria per cubic centimeter.

Class C—pasteurized milk which should contain less than one million bacteria per cubic centimeter and less than 50,000 after pasteurization.

Class D.—milk not suitable for drinking purposes, containing over one million bacteria per cubic centimeter and from farms scoring less than 40 per cent. This milk is allowed to be sold only for cooking or industrial purposes after pasteurization or having been heated to a higher temperature.

Regulations are usually enforced through local health authorities. Massachusetts has debated for several years the establishment of a state-wide milk commission, and the milk committees generally advocate state laws to bring about more adequate control, as the area from which the states draw their milk is very large, and municipal and county coöperation hard to secure. In New York a conference has been called of representatives appointed by governors of New England and the middle states to discuss constructive legislation looking to even greater uniformity than state control. At least thirteen large cities of the United States have been very active in strengthening their control over the milk supply.

See HEALTH, PUBLIC, REGULATION OF; INSPECTION OF COMMODITIES; PURE FOOD.

References: M. J. Rosenau, *The Milk Question* (1912); U. S. Treasury Dept., "Report of Commission on Milk Standards" as reprinted in *Public Health Reports*, 1912, No. 78; Massachusetts Milk Commissions Association, *Brief* (1912). SAMUEL MCCUNE LINDSAY.

MILL-BOY OF THE SLASHES. A nickname bestowed upon Henry Clay by his followers for the purpose of arousing popular support for him since in his boyhood he was said to have tended a mill near his home in that region of western Virginia known as "the Slashes." See CLAY, HENRY. O. C. H.

MILLIGAN CASE. In 1864 Milligan was arrested at his home in Indiana by order of the military commander of the district of Indiana, charged with conspiracy against the Government of the United States, and on trial by a military commission was sentenced to be hanged. On his application to a federal court the question was raised whether the military commission had authority to try him for the offense (*Ex parte* Milligan [1867], 4 *Wall.* 2). In the Supreme Court it was held that military courts may be provided for the trial and punishment of offenses against the rules provided "for the government and regulation of the land and naval forces" (Const., Art. I, Sec. viii, ¶ 14), and military law may be substituted for the civil authority on the theater of actual military operations where war really prevails and there is necessity for such substitution owing to the temporary overthrow of the civil authority; but that there can not be a substitution of the military for the civil authority within a state or district in which the operation of the duly constituted courts has not been suspended, and that within such state or district there can not be a trial of a person not enrolled in the military or naval forces of the United States for a criminal offense otherwise than in a regularly constituted judi-

cial tribunal in accordance with the constitutional guaranties provided for such cases. Four of the justices dissented on the ground that under the war power Congress might provide for the trial before military tribunals in time of invasion and insurrection of offenses against the United States within a state or district in which martial law has been declared and the writ of habeas corpus suspended. See HABEAS CORPUS. E. McC.

MILLIONS FOR DEFENSE, BUT NOT ONE CENT FOR TRIBUTE. A statement popularly attributed to Charles C. Pinckney (*see*), one of the three peace commissioners to France in 1797, in answer to the demands of the French agents (X Y Z) (*see*), for money as a price for receiving the American agents and settling the dispute. O. C. H.

MILLS, ROGER Q. Roger Q. Mills (1832–), a native of Kentucky but a life-long resident of Texas, is notable principally as a student of the tariff and as a leader in legislation upon that subject. He sat as a Democrat in the House of Representatives from 1873 to 1892 and in the Senate from 1892 to 1899. In 1887–89 he was chairman of the ways and means committee, and in April, 1888, he reported from this committee the so-called "Mills Bill," providing for a sharp reduction of duties on sugar, woolens, glassware, and other commodities, the substitution in many instances of *ad valorem* for specific duties, and the placing of numerous hitherto dutiable articles, *e. g.*, wool, hemp, flax, salt, and certain kinds of lumber, upon the free list. July 21 the bill was passed by the House. In the Senate, however, it was radically amended by the protectionist majority; and, the House refusing to concur in the amendments, the measure failed of adoption. In consequence the tariff became the principal issue in the campaign of 1888. By reason, chiefly, of his adherence to the gold standard, Mills was defeated, in 1899, for reëlection to his senatorial seat. See DEMOCRATIC PARTY; TARIFF LEGISLATION; TEXAS. **References:** E. Stanwood, *Am. Tariff Controversies* (1903), II, 231–242; E. McPherson, *Handbook of Politics* (1890); *Senate Reports*, 50 Cong., 1 Sess., No. 2332 (1888). F. A. O.

MINE LEGISLATION FOR LABORERS. Under the Constitution the Federal Government has no jurisdiction over the mining industry, so far as conditions of labor are concerned, except in the district of Alaska, the Philippines, and the Hawaiian Islands. The authority to enact legislation for the safety and welfare of mine employees is reserved to the respective states. Up to the present time most of the laws written upon the statute books had their inception in some mine disaster; and as disasters involving any considerable loss of life are more prevalent in coal mines than in other branches of the mining industry, legislation looking to the lessening of the hazards of the vocation has been largely confined to the coal-mining states. The Avondale disaster in the anthracite region of Pennsylvania, which occurred Sept. 6, 1869, was the inciting cause of the first coal-mine regulations act in the United States. The laborers in the metal mines, in the quarrying industry, and in other lines of mining except coal, have had little attention from the law makers. The laws in the several coal-mining states lack uniformity, though in most cases they impose restrictions and penalties upon the mine operators and leave the mine employee free to endanger his own life, and lives of his fellowworkmen, and the property of his employers. A crying need in this country is the securing of uniform laws in the mining states, which shall have as a prime object a military form of discipline in dealing with dangerous conditions, with adequate penalties for disobedience of rules whether those infractions result in accidents or not. An Act of Congress approved May 16, 1910, established a federal Bureau of Mines in the Department of the Interior. One of the principal functions of this bureau is the study of explosives, and of mining methods generally, with the idea of recommending to the state governments and to mine operators precautions that will reduce the annual death toll in the mining industry. Unfortunately, the federal bureau can only recommend; it cannot enforce. See LABOR CONTRACTS; LABOR ORGANIZATIONS; LABOR, PROTECTION TO; LABOR, RELATION OF THE STATE TO; MINES AND MINING, RELATION OF GOVERNMENT TO. **References:** Bureau of Mines, *Annual Reports*; references under MINES AND MINING, RELATION OF GOVERNMENT TO. E. W. P.

MINERAL LAND. Lands valuable for minerals are subject to disposition under the Mining (lode) Act of 1866, and the Placer Act of 1870, as amended. Prior to these laws the lead, copper, and iron lands of the Middle West were leased and sold under special laws, while in the gold fields of California the Spanish and Mexican laws and miners' usage were employed. The mining act confirmed the local customs or rules of the miners where not inconsistent with the federal laws. Mineral lands may be sold for lode claims at $5.00 an acre, or at $2.50 for placers. The right to follow the lode is granted where the claim includes the apex, otherwise the claim may extend 1500 feet along the lode by 600 feet at right angles to the trend and following the dip of the lode downwards. Placer claims are limited to twenty acres for an individual or 160 for an association. Improvements to the value of $500.00 must be made prior to patent, and $100.00 must be expended an-

nually on each claim between filing and patent. In 1894 the Placer Act was extended to oil lands, in 1897 to building-stone lands, in 1901 to saline lands. The United States mining laws were extended to Alaska in 1900. See CONSERVATION; MINES AND MINING, RELATION OF GOVERNMENT TO; PUBLIC LANDS AND PUBLIC LAND POLICY. References: General Land Office, *United States Mining Laws* (1909); National Conservation Commission, *Report*, 1909, III, 413–16, 521–603; C. R. Van Hise, *Conservation of Natural Resources* (1910), 98–102. P. J. T.

MINES AND MINING, RELATION OF GOVERNMENT TO. Between the two basic industries upon which man depends for his existence, agriculture and mining, there are three essential differences. (1) The products of agriculture are replenishable; the products of the mines once extracted can never be renewed. (2) The products of agriculture are, with few exceptions, destroyed in being utilized, whereas those of the mines and quarries (exclusive of the mineral fuels) are for the most part permanent additions to the wealth of the state. (3) The pursuits of agriculture (and to these may be added the chase and the fisheries) were and may be carried on by man while yet in a state of barbarism; while mining and the utilization of the mineral products, even in their crudest forms, mean some sort of civilization. The smith was given the high seat in the temple.

Inasmuch as mineral deposits are not replenishable, it becomes the duty of those having jurisdiction over them, by ownership or by sovereignty, to develop and utilize them with a maximum of efficiency and economy and with a minimum of waste. From the earliest times governments have exercised special authority over minerals and their exploitation. So long as the native metals of gold, silver, and copper were the only ones sought for and used, chiefly as mediums of exchange and for ornaments, the deposits and the right to work them were claimed by the sovereign as God-given perquisites. In the United States, mining law is based on the common law and although some of the earlier colonial grants reserved to the Crown a part of any metals discovered, long before the Revolution ownership of the surface was recognized as carrying with it the ownership of minerals lying beneath it. Nevertheless, Congress reserved from sale in 1807 the lead mines of Missouri, acquired through the Louisiana purchase, subject to lease. No leases were issued, however, until fifteen years later; and after a decade or more of trial the policy was abandoned. Regulations relating to areas and directions of mining claims were the outgrowth of local customs and conditions, the miners of a certain district usually getting together, establishing the boundaries of the "mining district," prescribing rules for their own government, water rights, etc., and providing penalties for their infraction. Hence the earliest comers in a district, perhaps a handful, might fix the laws and limits of a new district. Lack of uniformity in customs and carelessly kept records have been serious faults in this method.

In placer mining, claims were limited according to the character of the deposit; and such descriptive terms as "gulch," "creek," "bar," or "flat," were applied to the "diggings." In "deep," "lode," or "quartz" mining the German mining code, as distinguished from the Latin or Roman, took hold. The former gives the locator a certain length on the strike of the ore body and the right to follow it on the dip to any depth, whether extending under adjoining property, or not. The Roman code defines mining claims by vertical lines and is the one in practice in Mexico. The former has become incorporated in the federal statutes as the "extra-lateral," or "apex," law, and has been the incentive to more litigation, annoyance, and dissatisfaction to the mining industry than any other one cause.

Acts of Congress passed in 1846 and 1847 established the policy of disposing of mineral lands by sale, but they were largely inoperative and were substantially repealed by an act of 1850, and not till sixteen years later did Congress attempt any definite legislation in regard to mineral lands. The act of 1866 reserved from sale all lands valuable for minerals "except as otherwise expressly provided by law." It covered only mines of gold, silver, copper, and cinnabar, and was defective in other particulars. By the act of July 9, 1870, its provisions were made to apply also to placer claims. The act of May 10, 1872, declared that:

> All valuable mineral deposits in lands belonging to the United States . . . to be free and open to exploration and purchase, . . . and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

In this manner a part of the local customs and regulations were written into the statute law. The act of 1872, however, provided for a uniform size for mining claims on veins and lodes of gold, silver, copper, lead, tin, cinnabar, or other valuable deposits, and overruled the local customs in this particular. No definitions of vein and lode were given, and they have never been legally defined. Subsequent acts of Congress have amended and extended a number of the provisions of the act of 1872.

In 1884 the mining laws were extended to cover the district of Alaska, and in 1897 authorization was given to enter and patent lands containing petroleum and other mineral oils.

Congress first took cognizance of the coal deposits on the public domain in 1873, the

DISTRIBUTION OF THE PRINCIPAL ECONOMIC MINERALS IN THE UNITED STATES

act of March 3, of that year, providing for the entry and purchase of coal lands in areas not exceeding 160 acres for an individual, or 320 acres for an association. The coal-land laws were extended to the district of Alaska by the acts of June 6, 1900, and April 28, 1904, but have not been adapted to the development of the resources of the territory.

The acts of Congress which have done most for the mining industry are: (1) March 3, 1879, establishing the United States Geological Survey as a bureau in the Department of the

Interior; (2) May 16, 1910, establishing (also under the Department of the Interior) a federal Bureau of Mines. The Geological Survey is charged with the classification of the public lands, an examination of the geological structure, mineral resources, and products of the national domain, and, by appropriations made therefor, the study of the surface and underground water supplies. The Bureau of Mines is charged with the investigation of the methods of mining, especially in relation to the safety of miners, and the appliances best adapted to prevent accidents, the possible improvements of conditions under which mining operations are carried on, the treatment of ores and other mineral substances, the use of explosives, and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to said industries. The proceeds of mining lands under the reclamation act of June 17, 1902, are set apart for the reclaiming of arid lands.

In recent years much attention has been given to the necessity for more stringent interpretation of the mineral laws and for the conservation of the mineral and other natural resources. The conservation movement bids fair to eventuate in a marked modification in the mining laws and to provide for a leasing system, particularly of the coal, oil, and gas, lands. The following states and territories have enacted laws relative to the location and development of mining claims, namely, Arizona, Arkansas, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Otherwise the relation of the several states to the mining industry is expressed chiefly in laws providing for the health and safety of mine employees.

See CONSERVATION; MINE LEGISLATION FOR LABORERS.

References: *Treatise on the Law Relating to Mines* (1853); J. D. Whitney, *Metallic Wealth of the United States* (1853); J. A. Rockwell, *Compilation of Spanish and Mexican Law in Relation to Mines, etc.* (1851); Gregory Yale, *Legal Titles to Mining Claims and Water Rights in California* (1867); U. S. Commissioner of Mining Statistics, *Reports* (1867–76); U. S. Geological Survey, *Publications* (1886); "Mineral Resources of the United States" in *ibid, Thirty-Second Annual Report of the Director,* 1911; Director of the U. S. Mint, *Reports* (annual); G. A. Blanchard and E. P. Weeks, *Law of Mines, Minerals, and Mining Water Rights* (1877); H. N. Copp, *U. S. Mining Decisions* (1874) *U. S. Mineral Lands* (1881), *Land Owner* (monthly periodical); U. S. Public Lands Commission, *Report,* 1880; A. S. Hewitt, "A Century of Mining and Metallurgy in the United States" in Am. Inst. of Mining Engineers, *Transactions,* V (1877); C. H. Lindley, *Treatise on American Law Relating to Mines and Mineral Lands* (2d ed., 1903); C. H. Shamel, *Mining, Mineral, and Geological Law* (1907); U. S. Bureau of Mines, *Reports;* U. S. Reclamation Servicee, *Reports, Am. Year Book, 1910,* 501, 512, and year by year.

EDWARD W. PARKER.

MINES, BUREAU OF. The Bureau of Mines was created as a part of the Department of the Interior (*see*) by act of Congress approved May 16, and effective July 1, 1910. The chief purpose of the Bureau is to carry on inquiries and investigations with a view to lessening loss of life and waste of resources in mining and metallurgical operations. It is to make investigation of the methods of mining, especially in relation to the safety of miners, the appliances best adapted to the prevention of mine accidents, the improvement of mining conditions, the treatment of ores and other mineral substances, and the use of explosives and electricity in mining, and other inquiries and technological investigations pertaining to mining, metallurgical and quarry industries. The Bureau of Mines does not exercise any authority in connection with the inspection or supervision of mines and metallurgical plants in any state. The act of 1910 also transferred to the new Bureau of Mines the personnel and equipment of the technologic branch of the Geological Survey (*see*), which had been developed during the preceding five years in connection with the investigation of fuels and mine accidents.

The chief experimental station is located at Pittsburgh, Pennsylvania, where the work in the laboratories is supplemented by experiments conducted in a small coal mine under the conditions of actual mining. As a means of carrying on an educational campaign in behalf of mine rescue and first aid to the injured work, the Bureau of Mines in 1911 purchased and equipped with rescue apparatus, first aid and fire-fighting devices, seven cars of standard Pullman size each completely fitted with modern appliances. These cars, one stationed in each of the important coal fields or coal mining regions of the country, are intended to visit all the important groups of coal mines and give demonstrations and illustrations of this work. See MINES AND MINING, RELATION OF GOVERNMENT TO; MINERAL LAND.
References: Department of the Interior, *Annual Reports*; Geological Survey, *Annual Reports.*

A. N. H.

MINIMUM TARIFF. See TARIFF, MAXIMUM AND MINIMUM.

MINIMUM WAGE. Laws or trade agreements providing for a minimum wage prohibit paying any man less than the established scale. Higher wages may be, and frequently are, paid to the more efficient or more highly skilled. See FAIR WAGE; LABOR AND WAGES; WAGES,

Regulation of. Reference: F. T. Carlton, *Hist. and Problems of Organized Labor* (1911), 118–121. J. R. C.

MINISTER PLENIPOTENTIARY. A title regularly added to that of envoy extraordinary in naming diplomatic agents next below the grade of ambassador. See Diplomatic Service of the United States; Envoy Extraordinary. G. G. W.

MINISTER RESIDENT. See Diplomacy and Diplomatic Usage.

MINISTERS AND MINISTERIAL RESPONSIBILITY. This article confines itself to an indication of the extent to which the principle of ministerial responsibility exists on the continent of Europe, and to a brief discussion of the working of the principle. The system of responsible government—that is, of government by a ministry responsible to and in harmony with the more popular branch of the legislature—had its origin in England and spread from thence to the continent of Europe and to the self-governing British colonies. In western Europe the principle of ministerial responsibility has been adopted by France, Belgium, the Netherlands, Spain, Austria, Hungary, and Italy. The parliamentary system has been adopted in Norway, but the principle, while in part accepted in Denmark and Sweden, has not been fully recognized. In Switzerland the principle does not prevail. Within recent years there has been a movement in Germany looking toward the political responsibility of the imperial chancellor to the Reichstag, but such a movement is not likely to be successful unless it were possible first to introduce the principle of ministerial responsibility in Prussia. In Russia, upon the establishment of the Duma there was a movement in favor of the principle that the ministers should be responsible to that body, but such parliamentary institutions as exist in Russia today continue only by the sufferance of the Crown, and there is no immediate prospect of a sound parliamentary life or of ministerial responsibility to a parliamentary body.

The system of ministerial responsibility does not operate so well on the continent of Europe as in England. This is due in great part to the fact that the system is a borrowed one, which it is attempted to apply to conditions different from those in England. In France, for example, the elected Senate claims a much larger share in the political control of the cabinet than does the hereditary House of Lords in England, and this fact introduces a disturbing element into the parliamentary life.

But the most important respect in which parliamentary institutions on the continent differ from those in England, is that in England there exists what is practically a two-party system. If a ministry, composed as it is of the leaders of one party, should lose the confidence of the House of Commons, the leaders of the other party naturally and necessarily constitute the new ministry. In France, Italy, and Austria, on the other hand, there are a number of political organizations, which may unite for certain purposes, but whose unions lack the solidarity of a single political organization. With numerous small party groups, rather than with two strongly organized and opposing parties, a ministry must necessarily rely for its support upon a coalition of parties, and is apt to fall if any one of the parties should desert the coalition, unless the head of the ministry can immediately bring about another combination of party groups which will support him. This absence of a cohesive party organization leads to two results in a number of the countries on the continent which have adopted the parliamentary system: (1) an instability and frequent change of ministries; (2) a greater power on the part of the rulers in the choice of ministers, and in the shaping of party coalitions.

See Cabinet Government; Legislative System in Europe.

References: J. W. Burgess, *Pol. Sci. and Comparative Constitutional Law* (1891), II, 313. W. F. Dodd.

MINISTERS OF THE UNITED STATES, DIPLOMATIC FUNCTIONS OF. The status of a minister of the United States accredited to a foreign country depends upon three factors: the statutes of the United States bearing upon the diplomatic service; the instructions of the State Department; and the generally accepted principles of diplomatic intercourse. A minister has many non-diplomatic functions, such as issuing passports; certifying to the status of Americans; carrying on correspondence with his home government; forwarding complaints against the government to which he is accredited. His diplomatic functions concern his relations as the spokesman of his government and a medium of communication from foreign governments. He must, in that capacity, act as the representative of American citizens. He must present dispatches and make communications as directed by his government and may present them or parts of them as part of his general communications. If specially instructed so to do he may negotiate treaties, subject to the later approval or disapproval of the President. As the direct representative of his government, he is entitled to personal immunity, and also to extraterritoriality (*see*) for his premises and his suite. See Ambassador; Diplomacy and Diplomatic Usage; Diplomatic Service of the United States; Legations; Negotiation of Treaties by the United States. References: J. W. Foster, *Practice of Diplomacy* (1906); J. B. Moore, *Digest of Int. Law* (1906), §§ 624–683. A. B. H.

MINNESOTA

Constitution.—Minnesota having been organized as a territory in 1849, was admitted with its present boundaries, into the Union in 1858. It has had but one constitution, formulated and adopted under peculiar circumstances. The members of the constitutional convention were so evenly divided between the Democratic and Republican parties that control over the convention seemed likely to turn upon the outcome of a contest involving five seats. Both parties attempted to seize the preliminary organization. The result was two conventions, each claiming regularity. They finally agreed informally to submit identical constitutions to the people. The constitution thus submitted was adopted by practically unanimous vote. It was largely copied from the Ohio constitution of 1851. The general plan, many important details, and even the phraseology of numerous sections follow closely the model employed.

Constitutional Amendments.—Down to 1898 the constitution was frequently amended, especially by the adoption of new sections limiting the power of the legislature over taxation and the handling of the state funds. Other important amendments put into the constitution provisions which give the governor the right to veto separate items in appropriation bills (1876), forbid special legislation (1892), provide a method by which cities may adopt home-rule charters (1892), and give to women the right to vote for school and library offices (1898). In 1898 the amending clause of the constitution was altered so as to require a majority of all those voting at the election, instead of those voting upon the proposition, for the adoption of constitutional amendments. As amendments can be submitted only at the general elections, many voters fail to vote upon any proposal for constitutional amendments and thus in effect vote against all that are offered. In consequence, only two important amendments have since been adopted; in 1908 a "wide-open" tax amendment removed from the constitution all restrictions upon the taxing power of the government, except that the right to tax cannot be contracted away, that all taxes upon the same class of property must be uniform, and that the gross earnings tax upon railroads cannot be altered without the express consent of the voters. The amendment of 1898 impressed upon the text of the constitution an exceptionally unalterable character. In operation, legislative inaction and judicial construction have imparted some flexibility. Rigidity, nevertheless, is its distinguishing quality.

State Government.—The executive branch consists of a governor, lieutenant-governor, and various administrative officials, elected by the people, generally for terms of two years. Executive authority is diffused; the governor has the power to make appointments, especially to numerous administrative boards, has *ex-officio* membership upon some of these boards, and the power to remove from office a large number of state and local officials. The elected executive officials appoint their own subordinates and are subject to no control by the governor except removal for malfeasance. An important and distinctive feature of the administrative system is the concentration of the management and control over the state's charitable, penal, and correctional institutions in the hands of a board of three salaried members, appointed by the governor, who devote their entire time to this work (*see* COMMISSIONS IN AMERICAN GOVERNMENT).

The legislature consists of a senate, elected for four years, and a house of representatives, elected for two years. According to the constitution, the senators should be divided into two classes, one class retiring each biennium, and representation in both houses should be "apportioned equally throughout the different sections of the state." In practice, however, both requirements have been much disregarded. From 1897 to 1913 there was no reapportionment. Originally somewhat unequal, the apportionment of 1897 soon brought about an extensive over-representation of the southern part of the state, owing to the rapid growth in population of the twin cities and of the northern section of the state. One district had a senator for a little over 12,000, another, only one for nearly 60,000. The present apportionment, made in 1913, is much more nearly equal, but the twin cities and the northern section are still considerably underrepresented. The state is divided for legislative purposes into sixty-seven senatorial districts. Each district elects one senator and from one to four representatives. The senatorial districts which are entitled to elect more than one representative are in some instances subdivided into representative districts, each of which elects one member; in other instances the entire delegation is elected on a general ticket.

The legislature holds biennial sessions, limited to ninety days. Each house has a large number of standing committees; a few are important for they ordinarily determine the fate of nearly all bills and put into shape those which are passed. A recent change in the rules (1911), requiring that reports must be made upon all bills within a limited time, that votes in committees must be by roll call and must be a matter of public record, seems

likely, if maintained, to reduce the control of the powerful committees over legislation. The most notable departure from the common practice of American state legislatures is in the making of appropriations. Each house refers all proposals for appropriations to one of its committees. A joint committee, drawn from these two, prepares either a general appropriation bill or a small number of such bills, so drawn as to include practically all appropriations. Amendments can be offered in either house, but in practice very few alterations are made. Power and responsibility, but subject to effective control, are thus centered in a few

party tickets, but with a provision for independent candidacies by petition. Through amendments in 1912 and 1913 the system was thoroughly revised. The nominations to be made are now divided into two classes, partisan and nonpartisan. The partisan class includes only United States Senators, congressmen, and state officers. For these nominations the Wisconsin second choice system of voting is used. Members of the legislature, judges, and all county officers are in the nonpartisan class. For these offices the names of the two candidates receiving the highest vote at the primary are placed upon ballot

BOUNDARIES OF THE STATE OF MINNESOTA, SHOWING TERRITORIAL CHANGES

hands. This practice, in conjunction with the power of the governor to veto separate items, provides a method of handling the problem of state expenditures which is closely akin to the much praised budget system of various European governments.

General elections involving national, state, county, and in some places city, offices occur in November of the even numbered years. All of the candidates voted for at these elections are nominated by means of a primary election (*see* PRIMARY, DIRECT), held during the preceding June. This practice dates from 1902, Minnesota having been the first state to enact a compulsory primary election law applicable to the whole state. The system was first tested in a single county (Hennepin) in 1900 and then immediately extended to the entire state. In its original form the Minnesota primary system did not include state offices; selections were made by plurality vote; and all nominations were made upon

at the general election. There is also provision for a presidential preference primary in March of presidential election year.

About two-thirds of the voters participate in primary elections; in the cities the percentage frequently runs as high as ninety per cent. Public opinion in the state, while not unanimous, is overwhelmingly in favor of the system. By the payment of a small fee any person qualified for an office can have his name placed upon the primary ballot. To vote the partisan list, the voter is required to declare his party affiliation and may be challenged for an attempt to participate in the choice of nominees of a party which he did not "generally" support at the preceding election. In practice, however, such challenges are rarely made. Voters can thus freely choose the party with which they prefer to act in the matter of nominations. In most localities, if one party has a decided ascendancy, nearly all the voters act with that party at the primary. This

practice seems not to deter but rather to promote independent voting at the general election.

The courts of the state are of three grades; justices of the peace or special municipal courts for towns and cities, nineteen district courts holding terms in each county, and a supreme court of five members. There is also a probate court in each county. All the judges are elected for terms of from two to six years.

Local Government.—The most important subdivisions of the state are the counties and towns, the latter usually corresponding to the congressional townships. Where the population is sufficient and the voters so desire, a municipal form of government replaces that of the town. Control over county affairs and the performance of many duties in behalf of the state are entrusted to boards of county commissioners, elected for four years, and to numerous elected county officials. All are coördinate authorities. Responsibility is not easily located. Removal from office is possible only for gross dereliction. The towns are governed by an annual town meeting, consisting of all qualified voters, and various officials elected at these meetings. The most important are three supervisors who act as an administrative board. The constitution of the state permits cities to adopt locally framed home rule charters, and about forty-five cities now have such charters. Six of these charters, including those of Saint Paul and Duluth, are upon the commission plan. A commission government charter was rejected by Minneapolis in 1913.

Minnesota is notable for having practically no state debt and for the possession of a large amount of carefully invested funds. These amount (1913) to over $28,000,000, the largest of any state except Texas, and are increasing at the rate of over a million per annum. They belong chiefly to the school, university, and swamp land funds. The possession of these funds enables the state to engage on a large scale in the policy of coöperating with its local communities in various enterprises of both state and local interest, especially education. This is done by purchasing the bonds issued for certain purposes by localities and by granting subventions conditioned on a certain amount of local expenditure. As the enterprises are subject to strict state supervision the policy, especially in education where it has been longest employed, has produced very satisfactory results. The educational system is notable for the close correlation of its parts, absence of duplication, and a form of effective state supervision which, nevertheless, leaves local communities a large degree of independence in educational matters.

Parties.—Politically Minnesota has been Republican with pronounced independent tendencies which in the election of 1912 gave the 12 electoral votes of the state to the Progressive candidate. From 1860 to 1898 the Republican party controlled all branches of the state government, except the legislature of 1891 and for a few years the supreme court. Since 1898 the general Republican ascendancy has continued, even with increased majorities, but the Democratic candidates for governor have won four out of eight elections. Those of 1904 and 1906 were remarkable instances of independent voting. In 1904 the Republican candidate for President received 216,651 out of 292,860 votes, yet the Democratic candidate for governor won by a plurality of nearly 8,000.

Population.—In 1910 the state had 2,075,708 inhabitants. An unusually large percentage is of foreign birth or parentage, approximately seventy per cent in 1910.

References: E. D. Neill, *Hist. of Minnesota* (1858); W. W. Folwell, *Minnesota* (1908); F. L. McVey, *Gov. of Minnesota* (2 ed., 1908). Minnesota Historical Soc., *Collections* (1872–1908); F. N. Thorpe, *Federal and State Constitutions* (1909), IV, 1981–2024, *Legislative Manual* (1867–1913); J. C. Young, *Gov. of People of Minn.* (1906).

FRANK MALOY ANDERSON.

MINORITIES IN LEGISLATIVE BODIES. See COMMITTEE SYSTEM; CONGRESS; RULES OF CONGRESS; RULES OF LEGISLATIVE BODIES.

MINORITIES, RIGHTS OF. That the individual possesses rights which cannot be abrogated by monarchs, no matter how absolute, or by majorities, no matter how great, was a part of the doctrine of natural rights as generally accepted by the founders of American government. According to Blackstone, "The principal aim of society is to protect individuals in the enjoyment of those absolute rights which are vested in them by the immutable laws of nature." This doctrine was elaborated by Madison in the tenth number of the *Federalist* in which he contended that the protection of the faculties "from which the rights of property originate" was "the first object of government." Madison further remarked that to secure the public good and private rights against the dangers of majority factions "and at the same time preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed." The rights of minorities have been the object of no little solicitude on the part of the framers of American systems of government since the establishment of independence; and as Judge Cooley remarks: "All the safeguards which under kingly government were ever interposed against the tyrannical powers of rulers, are incorporated in the bills of rights (*see*) of American constitutions as absolute limitations laid on the power of the majority for the protection of the liberty, property, privileges and immunities of the minority and of

every individual citizen." The minority rights thus established have been secured against attacks from simple majorities by making the constitutions difficult to amend and by entrusting to the judiciary the delicate task of defending constitutional principles against the acts of legislatures calculated to infringe them. How far eighteenth century publicists and constitution-makers considered the judiciary as the special bulwark for the rights of minorities against legislative majorities is a matter of some controversy; but certain it is that Hamilton took this view of the judiciary and regarded this as one of the specially commendable features of the Federal Constitution (*Federalist*, No. 78). In the course of time, as the suffrage was extended and the sway of majorities became more marked, reliance on the judiciary, state and national, as the safeguard for the rights of minorities, became more common. The development of confidence in the judiciary is evident in the debates in state constitutional conventions. Whatever be the theory of majority rule now obtaining in the United States to-day, it remains a fact that rights of person and property of individuals are secure against legislative and popular majorities. As President A. T. Hadley remarks: "The general status of the property-owner under the law cannot be changed by the action of the legislature, or the executive, or the people of the state voting at the polls, or all three put together. It cannot be changed without either a consensus of opinion among the judges which should lead them to retrace their old views, or an amendment of the Constitution of the United States by the slow and cumbersome machinery provided for that purpose, or, last—and I hope most improbable—a revolution." See BILLS OF RIGHTS; DUE PROCESS OF LAW; LIBERTY; MAJORITIES, THEORY OF. References: *The Federalist*, No. 10; J. A. Smith, *Spirit of Am. Government* (1907); C. A. Beard, *Am. Government and Politics* (1910), ch. viii. C. A. B.

MINORITY REPORT. The minority of a legislative committee are said to make a report, since their views are filed and printed at the time that the committee makes its report. According to the rules this statement of views may not include any testimony or other matter not in the nature of argument. Managers of a conference are not allowed to make any minority report, as the report of a conference (*see* CONFERENCE COMMITTEE), being in the nature of a compromise, and presumably in final form, must be accepted, rejected or recommitted, but not amended. Since the reports of both the majority and the minority of a committee are printed and discussed, any privileges that may be granted are given to the subject, not to the report of the majority. See COMMITTEE SYSTEM; REPORTS OF COMMITTEES; RULES OF CONGRESS. R. L. A.

MINORITY REPRESENTATION. Members of the house of representatives of the Illinois general assembly are chosen under what is styled the minority representation system. To some extent this system has been used in British elections. Illinois is the only state in this country to give the plan an extensive trial—lasting over forty years. Public opinion in the state has long called for its abolition, but so difficult is the process of amending the constitution that the efforts in this direction have been unavailing. The plan was put into the constitution by the constitutional convention of 1870. The hope was that the character of the legislature would be improved by enabling the voters to cumulate upon the best candidates. The practical effect of the operation of the system has been precisely the opposite. Illinois is divided into 51 legislative districts, each district electing one member of the state senate and three members of the house of representatives. The cumulative system of voting applies to the selection of members of the house of representatives.

An elector may cast three votes for one candidate, one and one-half votes each for two candidates, two votes for one candidate and one for another, or one vote each for three candidates. It evidently was the expectation of the backers of the plan that the two great parties would each continue to nominate three candidates for representative in each district. Had this expectation been realized, the operation of the plan would have been more beneficial to the public than it has actually proved to be in practice. After a very few elections under this system, the party leaders learned the folly, from the selfish politician's point of view, of nominating candidates for certain defeat. Instead of nominating three candidates for representative, therefore, each party would nominate only two candidates in the majority of districts. This meant that there would be only four major party nominees for the three positions to be filled. This meant, further, that all the nominees, except one, were practically certain of election, for under the American party system, with the party ticket that is voted by a single cross in the circle at the top of the party column, it is very difficult to bring about the election of independent nominees. Moreover, in districts predominantly Republican, the Republican party would make two nominations, and the Democratic party but one. In Democratic districts, this arrangement would be reversed. This meant that the voter woud have no choice whatever on election day. All three major party nominees—two of one party and one of another—were certain of election, barring the unusual contingency of the success of an independent or minor party nominee.

It is well known that the power of political bosses and of special interests is greater in making nominations than in controlling elec-

tions, where the voters are afforded a real choice at elections. As it has developed in pratice in Illinois, the minority representation system means that a party nomination for representative is equivalent to an election, except that in districts where there are two nominees of each party, one of the four nominees must suffer defeat. It has been very difficult, therefore, for even an aroused public sentiment to produce much effect on a body chosen in this manner.

A few years ago, as the result of general public dissatisfaction with both branches of the legislature, a movement was started to bring about improvement. A revolution has been wrought in the control of the senate, the members of which are not chosen by the minority representation system. The old gang has been forced to surrender the power to a group of progressive and public spirited senators. The house of representatives has been improved but little. In 1909 the house was organized by a bipartisan combination of Republicans and Democrats. Late in the same session William Lorimer, whose election has since been invalidated, was elected United States Senator by this same bipartisan combination. Disinterested and intelligent public opinion in Illinois is substantially in agreement in the view that the system of minority representation should be done away with. Governor Deneen, in official messages, has strongly urged the amendment of the constitution to this end.

When the Sanitary District of Chicago was created by act of the legislature in 1889, provision was made for a board of nine trustees, to be chosen under the plan of minority representation, but without cumulative voting. Each elector was allowed to vote for five of the nine trustees to be chosen. Here, as in the case of election of representatives, the plan did not work for the best interest of good government, and, a few years ago, the legislature was induced to do away with the minority representation system of electing trustees.

See PROPORTIONAL REPRESENTATION.

References: J. R. Commons, *Proportional Representation* (1906); R. E. Curtis, "Proportional Representation" in Wisconsin Library Commission, *Comparative Legislation Bulletin*, No. 14 (1908); B. F. Moore, *Hist. of Cumulative Voting in Illinois* (1910); J. W. Garner, *Intro. to Pol. Sci.* (1910), 458–474.

GEORGE C. SIKES.

MINT OF THE UNITED STATES. The four Federal mints in operation are in New Orleans, Philadelphia, San Francisco, and Denver; that in Philadelphia was the first established (1793). Mints have also been in operation, but are now discontinued, at Charlotte (1838–1861), Dahlonega (1838–1861), and Carson City (1870–1893). Each mint is in charge of a superintendent responsible to the Treasury Department and includes a melter and refiner's department, a coiner's department, and an assayer's department (*see* ASSAY OFFICES). Not only do the mints undertake coinage, but they convert for private individuals gold and silver bullion into fine bars with the weight and fineness stamped thereon. They also part and refine bullion.

The total coinage in 1910 was $54,215,000, of which gold was $47,579,000; silver, $4,298,000; and minor coin, $2,339,000. The coinage was distributed between the several mints as follows: San Francisco, $25,215,000; Denver, $23,352,000; and Philadelphia, $5,648,000. The bulk of the minor and subsidiary silver was done at the latter mint. The total value of the bars was, for gold, $91,187,000, and for silver, $5,418,000. The larger part of this manufacturing process was for gold, carried on at New York, $54,869,000, and at Seattle, $12,093,000.

As the coinage of silver dollars was discontinued in 1905 and the issue of gold certificates was authorized against bullion in 1911, not so much coinage will be required in the future, and it is probable that the operations of this service will be contracted. The mints are more than self-sustaining. In 1910 their earnings were $4,870,000 against expenditures of $1,463,000. This surplus was largely due to the seigniorage on minor and subsidiary coins.

See COINAGE AND SPECIE CURRENCY IN THE UNITED STATES; GOLD CERTIFICATES; SEIGNORAGE; SILVER COINAGE CONTROVERSY.

References: U. S. Director of the Mint, *Annual Reports*; D. R. Dewey, *Financial Hist. of the U. S.* (3d ed., 1907), 103, 104, 495; A. Hamilton, "Report on the Mint" in *Am. State Papers, Finance*, I, 97–107; U. S. Treasury Department, *Regulations in Relation to the Transaction of Business at the Mints and Assay Offices of the U. S.* (1908).

DAVIS R. DEWEY.

MIRANDA PROJECT. Francisco Miranda, of Caracas, Venezuela, influenced by the American Revolution to seek aid to free his country from Spain, visited London in 1790 and again in 1798, at the suggestion of Spanish-American revolutionists, to consult Pitt regarding plans for independence. His project was to secure Anglo-American coöperation in a military expedition by offering money and commercial advantages to England and by the offer of Florida to the United States. Although he obtained Pitt's support and the active sympathy of Rufus King, Hamilton and Pickering, he was unable to draw Adams into the scheme to furnish land forces to coöperate with the British fleet. See FILIBUSTERS TO AID INSURRECTIONS; LATIN AMERICA; SPAIN, DIPLOMATIC RELATIONS WITH. **References:** *Am. Hist. Rev.* VI (1901), 510, VII (1902), 711–15, X (1905), 249 *et seq.*, 276; J. M. Callahan, *Cuba* (1899),

69–73; A. Hamilton, *Works* (1851), V, 283, V. 238–9. J. M. C.

MISDEMEANOR. In criminal law, a crime of less serious character than a felony. See FELONY; LAW, CRIMINAL. H. M. B.

MISPRISION OF TREASON. The bare knowledge (without participation) of a treasonable act or plot. Participation in or assent to such act or plot would constitute treason. **Reference:** W. Blackstone, *Commentaries* (Cooley, Ed., 1765), IV. 121. H. M .B.

MISSISSIPPI

Early History.—The first settlement in Mississippi was made (1699) by the French at "old Boloxi," near the present town of that name. This strategic point was doubtless chosen by the French as the site of their settlement for the double purpose of controlling the navigation of the Mississippi on the west and of keeping in check the Spaniards who had settled at Pensacola on the east. The constitutional history of the state, during the colonial period, is divided as follows: (1) the French period of sixty-four years (1699–1763); (2) the English period of sixteen years (1763–1779); (3) the Spanish period of nineteen years (1779–1798).

Upon the withdrawal of Spanish authority from the region east of the Mississippi river and north of latitude 31°, Congress organized the country into the territory of Mississippi (April 7, 1798). This territory embraced a strip of land extending through the present states of Mississippi and Alabama, and bounded on the north by latitude 32° 30′ and on the south by latitude 31°. It was advanced to a second grade of territorial government, May 10, 1800. In 1804 the northern limit of the territory was extended to the southern boundary of Tennessee. Four years later Mississippi was advanced to a third grade of territorial government, being given a delegate in the lower house of Congress. The province of West Florida (*see*) revolted from Spain in 1810 and its territory was divided between Mississippi and Louisiana. With this accession, Mississippi territory embraced all of the present states of Alabama and Mississippi. It was later divided and the western part was admitted into the Union as the state of Mississippi, December 10, 1817.

State Constitutions.—The constitution of 1817 differed from all other constitutions of Mississippi in the following respects. (1) All voters must belong to the militia, unless exempt from military duty or payers of a state tax. (2) A property qualification imposed upon the governor, lieutenant-governor, members of the legislature, and those voting for same. (3) Ministers of the gospel were made ineligible to the office of governor or to membership in the legislature. (4) Judges were given tenure of office during good behavior, or until they were sixty-five.

With the development of the Jacksonian principles of democracy, which took deep root in Mississippi soil, there arose a clamor for manhood suffrage and for an elective judiciary. This led to the formation of a new constitution in 1832. This constitution differed from the first in the following respects. (1) All officers, both state and county, were made elective. (2) Tenure of office for life or during good behavior was abolished. (3) No property qualifications were required for voting or holding office. (4) Ministers of the gospel were made eligible to membership in the legislature and to the office of governor. (5) The office of lieutenant-governor was abolished. (6) The judicial system of the state was reorganized.

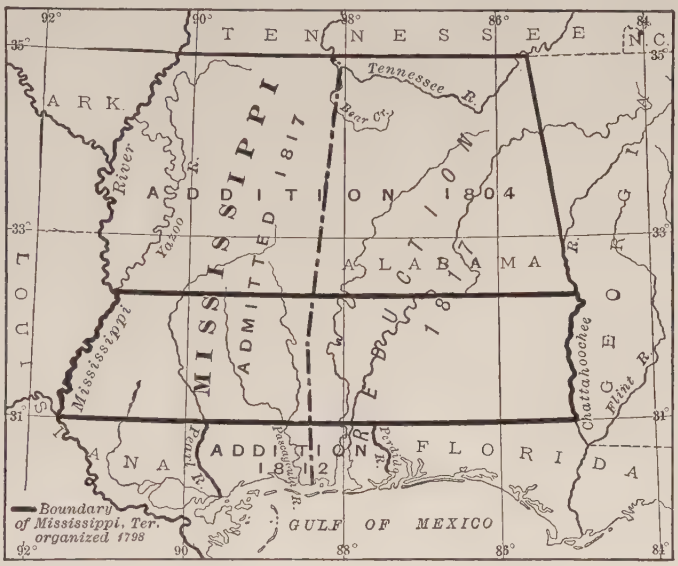
January 9, 1861, a convention adopted an ordinance of secession, and on March 25 ratified the constitution of the Confederacy.

The first convention in the South to assemble in accordance with President Johnson's plan of reconstruction met in Jackson, August 14, 1865. It accepted emancipation; declared the ordinance of secession "null and void;" repealed the other ordinances passed in 1861; and adopted certain amendments to the constitution of 1832 to meet the changed social and economic conditions produced by the war. To meet the demands of Congress for readmission to the Union, Mississippi held another convention in 1868. The resulting constitution was the only one in the history of the state to be submitted to a vote of its qualified electors. It contained certain proscriptive clauses, which caused its rejection by a vote of 55,231 to 63,860. The same constitution was adopted without the objectionable features in 1869, making the following changes in the fundamental law of the state: (1) it perfected a public school system; (2) reëstablished the office of lieutenant-governor; (3) provided for an appointive judiciary; (4) made several changes in the judicial system of the state and in the management of county affairs; (5) extended the terms of state officers to four years and of supreme judges to nine years.

Present Constitution.—The fourth constitutional convention was called in 1890, primarily for the purpose of removing the dangers of negro rule and of securing white supremacy in the county and state governments. Its most important provisions relate to the suffrage, which was restricted to male citizens twenty-one years old and upward who have not been convicted of certain crimes and have paid their taxes and registered within the pre-

scribed time, and are able to read the Constitution or understand the same when read to them. It also provided for a secret ballot, and otherwise safeguarded elections with certain wholesome regulations. The following officers were made "ineligible to immediately succeed themselves:" governor, state treasurer, auditor of public accounts, sheriff, and county treasurer. It forbade legacies or bequests of real or personal property or money "in any last will and testament or codicil in favor of any religious or ecclesiastical corporation . . . vided for municipalities, but previously existing charters have not been repealed.

Supervision over public schools is exercised by a state superintendent and by county superintendents of education, each of which is elected every four years. Separate public schools must be maintained for white and negro children in every school district "at least four months during each scholastic year," but this term may be extended indefinitely by local taxation in any county or separate school district.



Boundaries of the State of Mississippi, Showing Territorial Changes

denomination or association." Decided restrictions were laid upon corporate legislation, yet liberal terms were granted to new factories. This constitution also provided for the purchase of state convict farms at the discretion of the legislature, and it placed restrictions upon the leasing of convicts. It imposed on the legislature the duty of providing pensions for indigent soldiers and sailors of the Confederacy and their widows. The legislature was forbidden to enact any law discriminating against the rights of women "to acquire, own, enjoy, and dispose of property of all kinds," it being stipulated that married women were "fully emancipated from all disability on account of coverture."

The counties of the state are divided into five districts, each of which elects a member of the board of supervisors and a justice of the peace for terms of four years. The supervisors have jurisdiction over public roads in their respective counties and, within certain limitations, over the collection and disbursement of taxes for county purposes. The jurisdiction of justices of the peace extends to causes not exceeding $200. Uniform charters are pro-

Political and Partisan Affiliations.—Democratic governors held office in the state by popular elections from 1817 to 1850. The Whigs were successful, however, in the congressional campaigns of 1838 and 1839. The unfortunate incidents connected with the repudiation of the Union Bank bonds caused a sharp division between Whigs and Democrats in the early forties. The former opposed repudiation, which policy the latter for the most part favored. In the gubernatorial election of 1841 the question of repudiation became the principal issue, and the Whigs were defeated after a heated campaign. Two years later an effort was made to form a union between the Whigs and that branch of the Democratic party which was in favor of paying the bonds, but this plan failed, and the gubernatorial election of 1843 resulted in another Democratic triumph. In 1851 a remnant of the Whig party and the Democrats who favored the Compromise of 1850 formed the Union party. Their gubernatorial candidate, Henry S. Foote, defeated Governor John A. Quitman, whom the Democrats had nominated for a second term. The question of repudiation was then reopened by

the Whigs, but its agitation led to their defeat in 1853. From that time until 1860 the Democrats were uniformly successful in all political campaigns in the state.

At the end of the War of Secession Governor Clark was arrested and sent to a federal prison, leaving the state without a civil head. The President then (June, 1865) appointed Judge Sharkey, a former Whig and a strong Union man, to the office of provisional governor. In a general election (October, 1865) Governor Humphreys was chosen chief executive of the state. Under the reconstruction act of March 2, 1867, Mississippi was placed in the fourth military district under command of Generals Ord, Gillem, and McDowell, respectively. As a result of the disfranchising clauses of the act, there were only 46,636 white and 60,167 colored registered voters in the state in 1867. After the rejection of the constitution of 1868 Governor Humphreys, a Democrat, who had been reëlected governor by a majority of 8,000, was removed from office by military force, and General Ames became military commander and civil governor of the state. The joint resolution of Congress, passed February 16, 1869, made him virtual dictator of the state, giving his proclamations the force of law throughout its length and breadth.

In the election of 1869 General Alcorn, the Republican nominee for governor, was overwhelmingly elected over Judge Dent, the nominee of the National Union Republican party. All Republican candidates for Congress were also elected and a Republican legislature was chosen for the first time in the history of the state. In January, 1870, this legislature adopted the Fourteenth and Fifteenth Amendments to the Federal Constitution and elected Hiram R. Revels, colored, and Adelbert Ames to represent the state in the United States Senate. The representatives of the state were admitted to their seats in Congress, February 24, 1870.

In 1875 a fierce political campaign resulted in an overwhelming victory for the Democrats, who elected their nominees in sixty-two out of the seventy-four counties in the state. When the legislature met in January, 1876, impeachment proceedings were instituted against certain Republican state officers. Governor Ames and Superintendent of Education Cardoza, colored, resigned, and Lieutenant-Governor Davis, colored, was convicted and removed from office. Since that time the state has been under Democratic control.

Present Conditions.—Since the adoption of the constitution of 1890 political power has been wholly in the hands of the white citizens of the state, and political contests have been confined to the Democratic primary elections in which the party nominees are chosen. Colored citizens take little interest in politics further than to attend, in small numbers, the state Republican conventions, held on the eve of national campaigns. As the white Republicans take no part in the Democratic primary elections and have no primary elections of their own, they generally vote only in national elections.

In 1910 an elective judiciary amendment to the constitution of 1890 was approved by a majority of the qualified electors then voting. The legislature (March, 1902) provided that all party nominations in Mississippi should thereafter be made by primary elections.

In 1800 the population was 8,850; in 1820 75,448; in 1840, 375,651; in 1860, 791,305; in 1880, 1,131,597; in 1900, 1,551,270; in 1910, 1,797,114.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; NEGRO SUFFRAGE; RECONSTRUCTION; STATE GOVERNMENTS.

References: Miss. Hist. Society, *Publications* (since 1898); F. L. Riley, *School Hist. of Mississippi* (1910; D. Rowland, *Mississippi* (1907); J. W. Garner, *Reconstruction in Miss.* (1901); F. N. Thorpe, *Federal and State Constitutions* (1909), IV, 2025–2137.

FRANKLIN L. RILEY.

MISSISSIPPI AND MISSOURI RIVER COMMISSIONS. The improvement of the Mississippi River, by act of Congress approved June 28, 1879, was placed in charge of a commission of seven men—three from the Engineer Corps of the Army, one from the Coast and Geodetic Survey, and three from civil life, of whom two must be civil engineers. The commission formulates plans for regulating the river and increasing its navigability, makes surveys, and executes works authorized by Congress. The location and construction of levees by the Federal Government are under the supervision of the commission (*see* WATERWAYS).

The Missouri River Commission existed from 1884 to 1902; it had charge of the surveys and construction work and developed plans for improving navigation. The commission consisted of three army engineers and two men from civil life, one of whom at least was to be a civil engineer. Since 1902, such improvements as have been authorized have been in charge of the Engineer Corps.

See NATIONAL WATERWAYS COMMISSION; NAVIGATION, REGULATION OF; RIVER AND HARBOR BILLS; RIVERS, JURISDICTION AND NAVIGATION OF.

References: "Laws of the United States Relating to the Improvement of Rivers and Harbors from August 11, 1790 to March 4, 1907," I, II, in *House Exec. Docs.*, 58 Cong., 3 Sess., No. 425. (1907); U. S. War Dept., Chief of Engineers, *Report*, 1901, I, 658–659, supplement, 365–428, *Report* (1902), i, 579, supplement, 175–215; Special Board of Engineers on Survey of Mississippi River, "Report" in *House Doc.*, 61 Cong., Sess., No. 50 (1909).

E. R. JOHNSON.

MISSOURI

Early History.—In the seventeenth century Missouri was explored by the French who remained in actual possession until 1770. During the Spanish period immigration was chiefly from French sources until 1790 when the American migration began. Aside from the government, which was Spanish, the territory was a typical French settlement until, as a result of the Louisiana Purchase (*see* LOUISIANA; LOUISIANA ANNEXATION), it came into American possession in 1804.

Missouri passed through all of the stages of territorial government. At first it was attached for governmental purposes to the territory of Indiana, but separate government soon provided; it was named the territory of Louisiana. The government consisted of a governor, secretary and judges appointed by the President, the governor and judges constituting the legislative body.

In 1812 when the name was changed to Missouri the territory was advanced to the second stage, the lower house of the legislature being elective. The upper house became elective in 1816.

The contest over the admission of Missouri during 1819–21, is familiar as a part of national history (*see* COMPROMISE OF 1820). It resulted in the recognition of Missouri as a slave state but the legislature was required to declare that the clause in the constitution which provided for the exclusion of free negroes should not be construed to abridge the privileges of citizens of other states. The boundaries fixed in 1820 were changed in 1836 by the inclusion of the Platte Purchase which extended the northwestern boundary to the Missouri River.

Constitution of 1820.—The first constitution was a relatively brief instrument containing about 10,000 words and dealing principally with the fundamental organization of government. It shows the influence of the constitutions of the southern states, particularly Kentucky and Alabama, but many provisions were taken from the constitution of Illinois. The legislature consisted of two houses, the members being elected for two and four years respectively. Universal manhood suffrage was established for white citizens but the members of the legislature, the governor and lieutenant governor were the only elective officials. All other officials were appointed by the governor except the treasurer, who was chosen by the legislature for a term of two years. The other executive officials were appointed for four years, while judges held during good behavior.

The growth of democratic ideas led to demands for additional elective offices and limited terms for judges. A revised constitution submitted in 1845 contained provisions of this nature but the voters refused to ratify it; some objected to the changes proposed while others desired a greater recognition of the elective principle. Immediately thereafter the legislature proposed an amendment which was ratified in 1849, fixing the terms of supreme and circuit judges at twelve and eight years respectively. Two years later amendments were adopted reducing the terms of all judges to six years and introducing the elective principle for these officers and for the principal administrative officials.

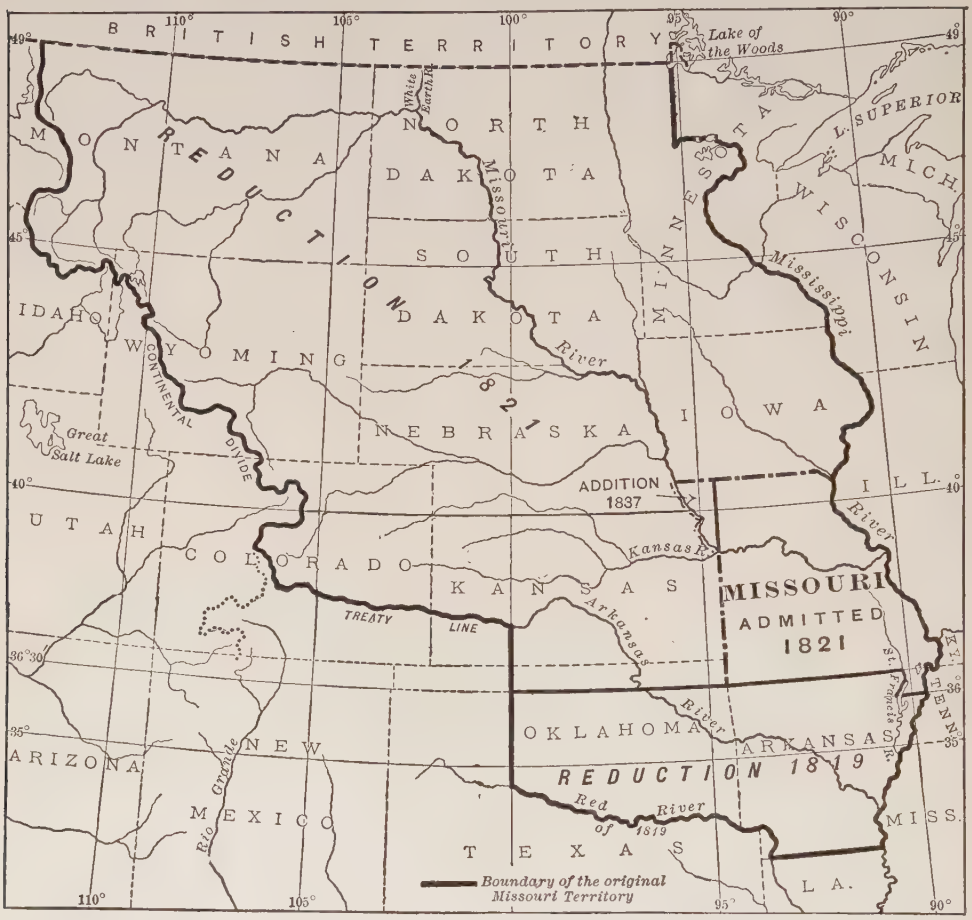
Constitution of 1865.—Missouri as a border state was much affected by the Civil War. The convention of 1861 was overwhelmingly opposed to the secession of Missouri. The governor and many of the members of the legislature, however, supported the southern cause and were ultimately compelled to flee from the state. The convention then reassembled and practically governed the state from 1861 until it dissolved itself in 1863. A new constitution was adopted in 1865. This instrument became notorious on account of its "iron clad" test oath, by means of which not only Confederate soldiers but all southern sympathizers were disfranchised and prevented from practicing certain professions. The liberal element in the Republican party secured the repeal of this provision in 1870. The Democrats regained control of the state soon thereafter and in 1875 a new constitution was adopted.

Constitution of 1875.—The tendency to limit the powers of the legislature which had manifested itself in the adoption of amendments to the constitution of 1820 and in the second constitution found even greater realization in the constitution of 1875 which, as a result, expanded in size including over 30,000 words. Of seventy-two proposed amendments, twenty-two have been adopted. Amendments are proposed by an absolute majority in each house and adopted by a majority of those voting upon the proposition. In 1908, an amendment was adopted providing for the initiative (*see*) and referendum (*see*) for constitutional amendments as well as ordinary legislation (*see* LEGISLATION, DIRECT). It has been used only in the case of two proposed amendments both of which were defeated. Manhood suffrage obtains, an alien who has declared his intention to become a citizen being permitted to vote. The Australian ballot (*see*) system is provided for all except minor elections but there is no registration of voters except in cities containing 25,000 inhabitants or more. In 1907 the compulsory direct primary (*see* PRIMARY, DIRECT) was established for all

officials chosen at the biennial general election and for United States Senators.

The larger counties are discriminated against in apportioning members of the House of Representatives. The total population of the state is divided by 200, to secure the ratio. Each county has one representative regardless of its population but a county must have two and a half ratios for two representatives, four ratios for three, six ratios for four, and two and a half ratios for each additional representative. There are at present 142 representatives elected for terms of two years. The state is divided into thirty-four senatorial districts approximately equal in population, each electing one senator for a term of four years, one half of the number being chosen biennially. Biennial sessions are held and their length curtailed by a provision for the reduction of the daily compensation from five dollars to one dollar after the expiration of 70 days, except that in revising sessions the period is 120 days.

The constitution imposes numerous limitations upon legislative power (*see* CONSTITUTIONS, STATE, LIMITATIONS IN). Local and special acts regarding a large number of matters are prohibited, while the restrictions upon the financial powers of the general assembly are of a very extreme character.



BOUNDARIES OF THE STATE OF MISSOURI, SHOWING TERRITORIAL CHANGES

The elective officials of the executive department are the governor, lieutenant-governor, secretary of state, auditor, treasurer, attorney-general, and superintendent of schools each chosen for a period of four years. There are also a large number of offices and boards which are filled by appointment of the governor, in most cases, with the consent of the Senate. The entire system is characterized by lack of concentration which leads at times to inefficiency in administration. The fact that much of the work of the principal departments of state administration is attended to by locally elected officials tends to accentuate the difficulties of the situation.

As a result of the growth of the state the judicial organization has been expanded by constitutional amendments and statutes. It consists at present of a supreme court of seven members chosen for terms of ten years, a su-

preme court commission of four members appointed by the supreme court, three courts of appeal of three members each, chosen for terms of twelve years and thirty-six circuit courts most of which consist of a single judge elected for six years. There are in addition special courts in certain counties and districts.

The state is divided into 114 counties in each of which there is an elective board of three members known as the county court which has charge of general county administration. County officials were formerly chosen for terms of two years but recently this has been changed to four years except for the prosecuting attorney and two members of the county court. Provision exists for local option in the matter of a simple form of township organization, and this now obtains in 21 counties. In other counties the only township officials are two or more justices of the peace and a constable. The city of St. Louis is, so far as possible, treated as a county. The prohibition upon special legislation has forced the legislature to enact general laws for cities. The constitution, however, invented the plan of authorizing large cities to frame their own charters which has been done by St. Louis and Kansas City.

Each constitution has devoted a special article to education. General public education, however, did not begin until 1839 when the system of common schools and the state university were inaugurated. State, county and township school funds and a university fund exist. In addition, the state appropriates one-third of its general revenue to the public schools and large amounts are raised by district taxation. The state also makes liberal appropriations for the support of the state university, six normal schools and for twelve eleemosynary institutions. Each institution is under the control of a separate board appointed by the governor.

Parties.—Influenced by Jacksonian ideas, Missouri became Democratic, the connection being strengthened by the ties of kinship and social and economic customs which bound it to the southern states. During the Civil War the Republicans and ultimately the Radicals gained control but the intolerance of the latter soon led to their overthrow by a coalition between the Democrats and the Liberal Republicans. The ascendancy which the Democrats regained continued practically unbroken until 1904 when the Republicans elected presidential electors, the lower house of the legislature and all state officers except the governor. The political upheaval was largely due to revelations of official corruption in the municipal assembly of St. Louis and state legislature. Four years later the Republicans again carried the state for President and elected the governor, lieutenant-governor, and lower house of the state legislature. In 1910 the three state officials chosen were Republican by small majorities while the Democrats carried the legislature. In the presidential election of 1912 the Democrats carried the state. It seems clear that Missouri is to be reckoned as a doubtful state. The chief factors in bringing about this change in political sentiment have been charges of "bossism" and machine politics, the incoming of farmers from Iowa and Illinois who forced up the price of Missouri farms, and the emigration of large numbers of Missourians who have moved on to the cheaper lands of Oklahoma and Texas. That this outward movement was more extensive than the incoming one is shown by the census of 1910 which indicates a decrease in rural population.

Missouri's population in 1810 was 20,845; in 1860 it was 1,182,012; in 1900 it was 3,106,665. The census of 1910 gives a population of 3,293,335, the decennial increase being the smallest since 1830.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: L. Carr, *Missouri; a Bone of Contention* (1888); I. Loeb, "Beginning of Missouri Legislation" in *Missouri Historical Review*, I (1906), 54–71; J. Viles, "The Story of the State" in *The State of Missouri* (1904), 9–32; *Journal of the Missouri State Convention, 1820* (reprint, 1905); *Constitution of the State of Missouri, 1845* (1846); F. W. Thorpe, *Federal and State Constitutions* (1909), 2139–2279; Missouri State Convention, *Journal and Proceedings* (1861, 1862, 1863); *Revised Statutes of Missouri* (1825, 1835, 1845, 1855, 1865, 1879, 1889, 1909).

ISIDOR LOEB.

MISSOURI COMPROMISE. The debates on the admission of Missouri into the Union lasted through three successive sessions of Congress, and involved two specific issues: (1) the admission of a western slave state; (2) the prohibition of slavery in the territories. It also raised three indirect questions; (1) the constitutional powers of Congress over slavery in the territories; (2) the desirability of the institution; (3) the policy of a division of the Union into a free and a slaveholding section by geographic line running east and west across the country.

The contest began in 1818 with the discussion of bills for making a slave-holding territory of Arkansas, and a slave-holding state of Missouri. The Arkansas bill was passed in 1819, with no restriction on slavery; but the Missouri bill failed because the House by a majority of one adopted an anti-slavery amendment proposed by Tallmadge of New York. In the session of 1819–20, after a passionate discussion in the press, in public meetings, and in legislatures, the House again voted to prohibit slavery in Missouri. The Senate on the other hand refused to approve a pending

measure for admitting the free state of Maine, unless Missouri came in as a slave state. As a compromise, the Senate passed the Maine bill, and the House passed a bill allowing the people of Missouri to form a slave-holding constitution. Tacked on was the Thomas amendment, by which slavery was prohibited in all the Louisiana purchase except Missouri.

In 1820–21 it appeared that the proposed Missouri constitution prohibited the coming in of free negroes. Congress by the so-called Clay compromise, therefore refused to admit the state until the people of Missouri should formally pledge themselves not to infringe on the rights of the citizens of other states.

The South thus secured a slaveholding state, and also a territory from which a second slaveholding state was eventually made; but the principle of the Northwest Ordinance was repeated for the area north of 36° 30′; Congress thus reiterated its constitutional right to prohibit slavery in any territory; and the North asserted a distinct hostility to the whole system of slavery.

See SLAVERY CONTROVERSY.

References: J. B. McMaster, *Hist. of the U. S.* (1895), IV, 572–601; L. Carr, *Missouri*, (1888), 139–148; J. W. Burgess, *Middle Period* (1897), 61–95; J. A. Woodburn, "Hist. Significance of Missouri Compromise" in Am. Hist. Assoc., *Annual Report*, 1893; F. H. Hodder, "Side Lights on the Missouri Compromise" in *ibid*, 1909, 151.

A. B. H.

MITCHELL, JOHN. John Mitchell (1870–), labor leader, was born at Braidwood, Ill., February 4, 1870. In 1885 he joined the Knights of Labor, and for the next five years worked as a coal miner in the West. In 1895 he became secretary and treasurer of a subdistrict of the United Mine Workers of America, and from 1898 to 1906 was president of the organization. In the same year he became a vice-president of the American Federation of Labor. He directed strikes of the anthracite coal miners in 1900 and 1902, securing for the men higher wages and shorter hours. For his connection with the controversy between the American Federation of Labor and the Buck's Stove and Range Company in 1908–13, *see* GOMPERS, SAMUEL. He was a member of the executive committee of the National Civic Federation, and chairman of the trade agreement department, but resigned in 1911 in deference to the wishes of the United Mine Workers. **See** LABOR ORGANIZATIONS; MINES AND MINING, RELATION OF GOVERNMENT TO. **References:** *Am. Year-Book 1910–1912*; Am. Federation of Labor, *Annual Reports*.

W. MacD.

MOBS AND MOB RULE. Throughout the history of the United States there have been turbulent periods and regions; and the history of the country is studded with such episodes as the Bacon rebellion in Virginia in 1676; the press gang riot of 1747 in Boston; the many and often brutal mobs of the Revolutionary period; the destruction of the convent in Charlestown in 1834; the draft riots of 1863; and numerous mobs connected with strikes during the last three decades.

The characteristic of mob rule is that it is made up of people permeated with a blind instinct of destruction, and leaders are likely to be swept aside. The mob is simply a return for the time being to the primitive conditions of unorganized society. Sometimes mobs can be influenced by a popular hero or a strong speaker. A sudden diversion will sometimes change a mob into a good natured gathering, and mobs have often been broken up by playing on them with fire hose. A determined mob, however, commonly has a definite object, such as the life of a hated person or persons, the destruction of a building or an attack upon the police or the soldiers. Mobs frequently sack and commit to the flames jails, courthouses and other public buildings.

The only effective means of dealing with a mob is to take the offensive against them with numerous and well drilled police or with militia or with regular troops; and the mob always hopes that neither police nor militia will fire into them. Women are frequently members of mobs and as blood-thirsty as the men (*see* PINKERTON MEN). Mounted police and cavalry are useful in breaking up mobs because they cannot be easily pushed back by mere weight. Very few mobs will stand a volley of musketry, even where great numbers may be armed with revolvers. Soldiers who wound or kill members of a mob may plead their orders as a defense in case of a suit or prosecution.

Inasmuch as local authorities are often lax, especially if the mob is incited against some hated individual or corporation, the laws of some states permit suit to be brought against the county by the owners of property that is destroyed, as in the case of the Pittsburg railroad riots of 1877.

Those who take part in mobs render themselves liable to severe penalties; the attack upon persons may constitute a serious crime, up to murder; organized attacks previously planned may be punished as conspiracy; resistance to the officers of the law may constitute riot; obstinate opposition may be brought within the more serious offenses of insurrection or treason.

See COERCION OF INDIVIDUALS; ORDER, MAINTENANCE OF; RIOTS, SUPPRESSION OF.

References: "Federal Aid in Domestic Disturbances" in *Sen. Docs.*, 57 Cong., 2 Sess., No. 15 (1903); J. E. Cutler, *Lynch Law* (1905); bibliography in A. B. Hart, *Manual* (1908), § 125; B. L. Bargar, *Law and Customs of Riot Duty* (1907).

ALBERT BUSHNELL HART.

MODEL DWELLINGS. The providing of model dwellings in America has taken two forms, improved tenements and model cottages. The greatest development has been in the former direction. The first model tenement was built in New York in 1856. The best one, in Brooklyn, in 1890. Almost without exception this movement has taken the form of "investment-philanthropy," what is known as "philanthropy and five per cent." These enterprises are to be found in a number of cities, New York, Chicago, Boston, Philadelphia, St. Louis and Hoboken, among others. One company in New York has six milion dollars thus invested.

Model cottages have been built chiefly in small towns and rural and suburban districts by employers of labor who have aimed thereby to attract and keep in their employ a better class of workmen. In some cases houses of this kind have been purposely run without profit in order to provide comfortable homes at low rents. Some of the best types of these will be found at Wilmington, Delaware; Lawrence, Massachusetts; Hopedale, Massachusetts; Youngstown, Ohio; and Washington, D. C.

Recently there has been a slight trend towards the development of "garden cities," following the example of England. The pioneer effort in America is that of the Russell Sage Foundation Homes Company at Forest Hills, Long Island, seventeen minutes from New York City, where attractive houses have been built in an artistic way in the midst of an attractively developed landscape. This settlement has not been designed for working-people, but for professional workers of moderate means. A similar development is now projected near Boston.

See BUILDING LAWS; HOTELS AND LODGING HOUSES; LODGING HOUSES, PUBLIC; MUNICIPAL HOUSING.

References: E. R. L. Gould, "Housing of the Working Classes" in U. S. Dept. of Labor, *8th Special Report*, 1895; G. W. W. Hanger, "Housing of the Working People in the U. S. by Employers" in *ibid*, *Bulletin 54* (1904), 1191–1244; Lawrence Veiller, *Housing Reform* (1910), ch. vii. LAWRENCE VEILLER.

MODERATOR. The presiding officer of a town meeting in New England. See TOWN MEETING. J. A. F.

MODUS VIVENDI. Temporary agreements pending the permanent settlement of international questions, or providing for a condition of affairs which from its nature is temporary, are usually called modus vivendi. See DIPLOMATIC AGREEMENTS; TREATIES IN INTERNATIONAL LAW. G. G. W.

MOLLY MAGUIRES. A secret society operating in the anthracite coal region of Pennsylvania between 1865 and 1876, notorious for the commission of crimes—particularly the murder of owners, officers, and bosses of mines, suppressed largely by the efforts of detective McParlan which resulted in the execution of nineteen "Mollies." Also the name of a lawless secret organization in Ireland. **Reference:** "The Molly Maguires" in *Am. Hist. Rev.*, XV (1909–10), 547–561. O. C. H.

MONARCHY. The idea of monarchy has, in the course of history, undergone so many changes and the term has been applied to so many governments differing both in form and principle, that it is difficult to define the term and classify its main divisions. Strictly speaking monarchy is that form of government in which the supreme power is vested in a single ruler; but in popular language the term is often used to designate a government in which the political chief is called king or prince regardless of the authority exercised by him or of the manner in which political power is distributed. According to its nature monarchy is divided into two classes—"absolute" and "constitutional" or "limited," a distinction is also made between "hereditary" and "elective monarchy," though this distinction is without importance since these terms do not indicate the nature of government. For example, the papal states were monarchies though the Pope was elected by cardinals, while the states of the Netherlands were called republics though the office of Stadtholder in some of them was hereditary. There are now no constitutional or limited monarchies in which the sovereign can legislate by decree, and there is little or no direct exercise of actual power by any authority in such a monarchy except by the democratic element. Moreover the historical monarchies have varied greatly both in form and principle with each succeeding epoch.

Theocracy was the earliest form of state and developed in Asia and northern Africa. It was ruled by a high-priest or king representing the gods and religion was the bond of union. When later it became transformed into human kingship its distinguishing mark was despotism. The people of Aryan origin, however, rejected this barbarous form of monarchy and recognized the rights of classes and of individuals apart from those of kings and princes. In civilized countries monarchy was at first absolute, but absolutism did not always imply tyranny. History furnishes many examples where absolute monarchs have ruled for the good of their subjects. The "enlightened" or "benevolent" despots of the eighteenth century belong to this class, and also Henry IV, St. Louis, Canute, Charlemagne and many other European monarchs of earlier centuries.

The feudal monarchy, characteristic of the middle ages, which developed after the decline of Carolingian authority, had, as its essential basis, the bond of fealty between the

king, the supreme lord of the land, and his vassals who derived from him their power, rank and property. The medieval monarchy was followed by the modern absolute monarchy, appearing first and most conspicuously in France. It proclaimed the doctrine of the divine right of kings and culminated in the absolutism of Louis XIV. This doctrine was also held by the Stuart kings of England; but it received a check by the execution of Charles I and the revolution of 1688, and also by the French Revoution of 1789. Since then all monarchies of western Europe have become limited or constitutional monarchies in which the power of king and emperor is gradually being reduced by the growth of democratic ideas.

See GOVERNMENT; SOVEREIGNTY; STATES, CLASSIFICATION OF.

References: J. K. Bluntschli, *The Theory of the State* (6th ed., trans., 1885); H. P. Brougham, *Political Philosophy* (1842), Pt. I; N. Machiavelli, *The Prince*, Intro. by H. Morley (3d ed., 1889); T. D. Woolsey, *Political Science* (1878), I, 487–585.

KARL F. GEISER.

MONETARY CONFERENCES, INTERNATIONAL. Four international conferences in the interest of a larger monetary use of silver were held during the latter half of the 19th century, in 1867, 1878, 1881 and 1892.

Paris, 1867.—The first met in Paris in response to an invitation from Napoleon III. The avowed object was to discuss the unification of coinage, in the hope of removing some of the obstacles caused by the great variety of coinage systems in Europe. Contrary to the original expectation, the conference gave little attention to the simplification of coinage systems already in operation, and voted that the desired object could best be brought about by making gold the sole standard of value. As many of the countries participating in the conference used silver with full legal tender, this conclusion had little practical influence; but the decision was subsequently referred to in the silver controversy in the United States as a premeditated attempt to fasten the gold standard upon the United States.

Paris, 1878.—The second conference, met at Paris, in 1878, in response to an invitation of the President of the United States, in accordance with authority given by the Bland-Allison Act (*see*). Its motive was to restore silver to the position of a standard money by the leading commercial nations of Europe and America. Germany, which had but recently (1871) demonetized silver, did not respond; France was tied up by agreements under the Latin Union; and England was openly averse to any sacrifice of the gold standard. The results were fruitless.

Paris, 1881.—In 1881 a third conference was held, again at Paris, on the united invitation of the United States and France. The situation appeared to be more favorable to bimetallism, as a new strain had been put upon the gold supply through the resumption of specie payments by the United States. The production of gold also continued to decline, and general prices were falling. Although there was a more sympathetic coöperation, in which Germany joined, there were no practical results.

Brussels, 1892.—For the fourth time a conference was held in 1892, at Brussels, on the sole invitation of the United States. Interest in Europe was less than in 1881, but political expediency drove the United States, which was laboring under the burden of heavy silver purchases demanded by the Sherman Silver Act of 1890, to make a final effort to extricate itself from its embarrassments. The effort was of no avail. This experience finally convinced the United States that it was useless to rely upon assistance from Europe in the establishment of a bimetallic system.

See SILVER COINAGE CONTROVERSY.

References: H. B. Russell, *International Monetary Conferences* (1898); F. A. Walker, *International Bimetallism* (1907).

DAVIS R. DEWEY.

MONEY IN POLITICS. See CORRUPTION, POLITICAL; PARTY EXPENDITURES, PUBLICITY OF.

MONEY LENDING, REGULATION OF. The small loan evil has had a remarkable growth in recent years, due to a very definite need among wage-earners and others for whom regular banking institutions furnish no accommodations. The loan shark offers the needed facilities at extravagant charges and on degrading terms. Frequent exposures of the extent and character of their practices have resulted in the passage by many states of drastic laws limiting the charge upon such loans to an unreasonable rate. The risk occasioned by the character of a part of the borrowers, the nature of the security offered by them, and the disproportionate expense involved in making small loans, necessitate the allowance of a higher charge than is regularly made by larger banking institutions. The alarming growth of the evil in recent years has been due largely to unwillingness of state legislatures to recognize this fact. Undue limitation of interest rates has restricted the business to those lenders who are willing to defy the laws in order to gain large profits, for reputable capital will not embark in a business surrounded with odium and disrepute. In proportion as laws have been unjust, charges have been unreasonable and business methods harsh. The ignorance, improvidence and helplessness of borrowers and the shortsightedness of employers have assisted in rendering drastic laws ineffective. The remedy lies in recognizing the business as a necessary element in our financial system, to be

subjected to reasonable regulations and effective supervision. Laws are urgently needed that will permit the organization of remedial agencies formed on the bases of: (1) semi-philanthropic competition; (2) voluntary protective effort; (3) desire for fair profits. Remedial loan agencies, as private enterprises, have been organized in twenty-four states and will spread more rapidly as soon as they are recognized and protected by law, and allowed to charge a fair rate above that allowed by usury laws, such as has been granted to modern foreign broking and chattel mortgage businesses.

Reference: Remedial Loan Department of Russel Sage Foundation, *Publications* (1911–12).

S. McC. L.

MONEY, THEORY OF

Function.—Money has several functions: (1) medium of exchange; (2) common denominator or standard; (3) standard of deferred payment. The theory of money depends largely upon the view taken of the functions performed by money. There are those who conceived the medium of exchange to be the original and primitive function of money; to them an increase of the medium of exchange means an increase in the purchasing power offered for goods. An increase of gold for instance would mean an increase in that which was offered for goods and consequenty an increase of prices. Those who take this view of the chief function of money are usually believers in the quantitative theory of money. According to this theory an increase of the quantity of money in circulation is supposed to increase prices, other things remaining equal.

Standard.—There is much ground, however, for believing in the distinction between the function of money as a medium of exchange and the function of money as a common denominator, or standard. Certainly the idea of a standard to whose value all other articles are referred for comparison is fundamental to the meaning of money; and yet the standard money of a country may not be the usual medium of exchange. In the United States, as is well known, we have the gold standard, but gold is very seldom used as a medium of exchange in buying and selling goods. Philosophically, the use of money as a standard ought to precede its use as a medium of exchange; for the fact of exchange demands theoretically the act of valuation. As soon as more than two or three articles enter the field of exchange, reference to a common denominator becomes imperative. It is impossible to conceive of exchanges going on without having first fixed upon the rate of exchange between the commodities.

Price.—The very definition of price carries us a long distance in the theory of money. Yet it is quite remarkable that most writers agree in defining price as the quantity of a given standard for which an article will exchange. The price of a bushel of wheat, for instance, is the quantity of the monetary standard, say gold, for which it will exchange in the open market. Without the concept of a standard, the idea of its price would be impossible. Since price is the ratio of exchange between a commodity and a monetary standard, we have already more or less committed ourselves to a theory of price. That is, price may vary with a change in either of the terms of the ratio of exchange. Price of course is only a particular case of value; value is a relation of exchange between any one commodity and all others; while price is a ratio of exchange between a commodity and one article chosen as the standard. Following this elementary admission in the definition of price, we are logically brought to believe that prices may change either because of forces affecting the commodity side of the price ratio, or because of forces affecting the side of the standard. If such reasoning be followed, one is not necessarily led to accept the quantitative theory of prices.

Two Theories.—Two theories of money have consequently arisen. The orthodox theory of Ricardo and his school is the quantitative theory of money. It was supposed that the value of coin or paper money could be fixed by control over its quantity; that there could be no depreciation of money but from excess. Ricardo seems to have been convinced that there was an imperative demand for money as a medium of exchange in order to obtain goods; and that this demand was so imperative that exchanges could not go on without the money. Consequently the value of money must vary exactly in proportion to the quantity in use. The theory is thus the statement of demand and supply; demand being the money work and supply being the amount of money in circulation. By his supposition also the state controls the supply of money and there is no free coinage. In this theory the value of money is not dependent on anything which might affect the value of the material out of which it is made. As in most of Ricardo's reasoning in economics, the conclusion may be accepted if the premises are granted. His quantity theory is true only if we accept the conditions upon which it is based: (1) no free coinage, but a monopoly of issues by the state; (2) the actual passage of that particular kind of money in all exchanges of goods. As a matter of fact free coinage of

gold, now the usual standard of prices, is quite general among commercial countries; and also goods are exchanged very largely by media of exchange other than the form of money used as a standard. If the premises no longer exist, in fact, the Ricardian theory of money could not survive in modern days.

Quantitative Theory.—The essence of the quantitative theory is probably this: (1) price making can go on only through an actual exchange of money against goods; (2) the general level of prices is fixed by comparison between the amount of exchanging to be affected, (taking into account the number of times each commodity changes hands), and the quantity of money (however defined) in circulation (taking into account the rapidity of circulation). The opponents of the quantitave theory believe it is erroneous to claim that prices are fixed by a comparison between the total goods to be exchanged and the media of exchange by which the work is done. This seems to them contrary to the accepted definition of price. In this country, for example, credit instruments such as checks, drafts and bills of exchange, are employed as media of exchange. The price cannot be determined by a comparison between goods offered for sale and the media by which they are exchanged, because the sums mentioned in the credit instrument are dependent upon prices fixed upon before the exchange was consummated. The theoretical problem is simplicity itself. Anything which can alter the ratio of exchange between the money commodity and all other goods will affect the price level. The quantitative theory takes into account influences operating only on the side of the money commodity; and therefore is but a one-sided and partial statement of the causes at work. It is a matter of common knowledge that prices can be influenced by causes other than those affecting the money metal itself. If so, we are obliged to depart from the usual explanation of the quantity theory and admit into our theory of prices the causes operating on the commodity side of the price ratio.

So far, the question of prices has been discussed on the assumption of a comparison between goods and some monetary standard. Of course credit enters into all monetary transactions and necessarily affects the theory of money. To the quantity theorist the introduction of credit works like an increase in the quantity of money; money plus credit offered against the same amount of goods to be exchanged must necessarily result in a rise of price. Those opposed to the quantity theory, however, believe that such an outcome is unsupported by the facts. A very large increase in the use of credit may also be accompanied by a fall of prices. That is, to explain prices, one-sidedly by reference to money and credit leaves out of account the forces working upon the commodity side of the price ratio. Thus no matter what may be the effects caused by changes in the quantity of money and credit, it remains obvious that prices may be largely affected by inventions, or by improved processes of production, by which commodities may be obtained at less sacrifice of labor and capital. Unless this point were admitted, it must be assumed that expenses of producing goods must remain invariable and changes of price could be brought about only by changes in the quantity of money and credit offered for the goods. This is the *reductio ad absurdum* to those who oppose the quantitative theory.

Quantitatitve Theory Criticised.—The acceptance of an economic principle must depend more or less on the method and proof used. Admittedly, no conclusion can be accepted which is at variance with observation and fact. Such tests repeatedly show that—if induction were mainly relied on—changes in the quantity of money are not accompanied by corresponding changes in the general level of prices. Indeed the popular view of "greenbackism" (1862–1879) that prices fluctuated with the amount of the circulation has been shown to be unfounded; and to have been due to changes in the value of the paper standard itself.

Indeed, the inability to get statistical instances to prove the effect of changes in the quantity of money on prices has inevitably led to putting emphasis on the precautionary phrase "other things being equal." To do this, however, forces the inclusion of "other things," which seem to have more influence on the result than the quantity element. If so, then it would be better analysis to find out the more powerful "other things," and to relegate "quantity of money" to its subordinate place. The undoubted truth is that the determination of prices is reached only by including many forces other than the quantity of money; that the one-sided and rather primitive way of ascribing price changes to the fluctuations in the amount of the circulating medium omits important elements of the problem; that credit, or exchanges of goods by banking devices, has largely supplanted the older ways of passing actual money; and, finally, that even to include credit with the quantity of money still leaves us with only one side of the price-making process under study.

To illustrate, we may refer to the recent discussion on the high cost of living in which it has been urged that its cause must be a general one like the extraordinary increase in the production of gold; that an increasing gold supply increases bank reserves, expands credit, and thus enlarges the purchasing power offered for goods. This is an example of fallacious reasoning quite too common. In the first place, the production of gold is not the only general force at work; the world-wide unrest of labor and the resulting heightening of money wages accompanied by a lessened number of hours of daily labor, lowered efficiency, and rising ex-

penses of production are well known; the rising extravagance of the many newly-rich in all countries who make a higher standard of living necessary to their envious competitors, is patent to all. But if we allow that higher wages for less efficiency can raise prices—and no one can deny that—we are forced to admit that forces working on the commodity side of the price ratio are equally effective in changing the price level with forces working on the side of money and credit. As soon as that point is reached, the quantitative theory is seen to be obsolete, one-sided and inadequate.

Reasons for Change in Value of Money.—The theory of money and prices, as in so many other investigations, has properly been influenced and enlarged by the progressive developments of industrial society. As economic operations have enlarged, more insight and analysis have been possible into the elements of the problem. To use an astronomical comparison, what was formerly a nebula has by better lenses been resolved into separate worlds and stars. That is, we are now able to see that big forces are at work on prices touching both sides of the price-ratio—both the money and credit side, and the goods side. Consequently, while the process of studying out the shifting causes is obviously a more complex practical problem, nevertheless the theoretical problem is clearer (even though it takes in more forces). If we are willing to investigate patiently the causes affecting expenses of production of goods—as well as those affecting the value of the gold standard, the new demand for gold as well as the new supply, the economizing devices of credit—it will tend to prevent snap-judgments as to the reasons for a change in the value of money. To jump at conclusions after studying only one side of the case ought to be regarded as economic insufficiency, Moreover, to treat the theory of prices too entirely from the theoretical point of view, and to ignore the practical course of price phenomena, is to put economics under a suspicion which it ought not to bear.

See Banking; Coinage, Free; Exchange, Principles of; Price, Economic Theory of; Silver Coinage Controversy.

References: J. L. Laughlin, *The Principles of Money* (1903); W. A. Scott, *Money and Banking* (4th ed., 1910); I. Fisher, *The Purchasing Power of Money* (1911); J. F. Johnson, *Money and Currency* (1905); W. S. Jevons, *Money and the Mechanism of Exchange* (1875); F. A. Walker, *Money* (1891); J. S. Nicholson, *A Treatise on Money, and Essays on Present Monetary Problems* (5th ed., 1901); Monetary Commission, *Report for 1898* (1900); W. C. Mitchell "The Quantity Theory of the Value of Money" in *Jour. of Pol. Econ.*, IV (1896), 139–165; C. M. Walsh, *Measurement of General Exchange Value* (1901); E. W. Kemmerer, *Money and Prices* (2d ed., 1909).

J. Laurence Laughlin.

MONOMETALLISM. The use of only one metal as the ultimate standard and as the basis of the monetary system of a country. The term is commonly used as opposed to the theory or principle of bimetallism (*see*). Its advocates point to what they contend is the undeniable fact, the difficulty or impossibility of retaining the relation between two or more metals or commodities fixed upon as the standard. If two metals are freely coined at a fixed ratio, one will, it is claimed, be overrated and consequently become the standard. The prevailing practice at the present day is to have as an ultimate standard a certain definite amount of one metal, in the United States 23–22/100 grains of fine gold. See Money, Theory of; Standard Money. **Reference:** F. M. Taylor, *Chapters on Money* (1906).

A. C. McL.

MONOPOLIES. Nature and Basis.—Monopoly is essentially a dominating unity of action exercised in selling or in buying specific kinds of goods or services. It involves the power to fix, within variable limits, the price and other conditions under which such goods or services may be bought or sold. The power inheres in control, complete or partial, over the supply of such goods or services, or over the demand for them. Exclusive right or power to produce a thing is desired to control supply and thereby to fix the price, which is the chief aim of private monopoly. Where unity of control affects the whole supply or demand, the monopoly is complete. Incomplete or ineffective monopoly exists where unity of action, though affecting less than the whole supply or demand, is yet sufficiently extensive to exercise dominant influence in the market. Ordinarily, control over four-fifths of the supply or demand is deemed sufficient effectively to govern market conditions. The basis of complete monopoly may be an exclusive law, or exclusive charter, a patent, secret process, or sole possession of the product or of something essential to its production. Effective monopolies may have their basis in combination, in inherent characteristics of the business, especially in various forms of discrimination practised by shippers such as special railway rates, refrigeration, car-supply, and terminal facilities.

Motives and Evils.—Three ultimate motives, often in practice coöperating, lead to monopolies. (1) Government aims thereby to promote public welfare, either by (a) stimulating beneficial enterprise by means of franchises, patents, trade marks, copyrights, government monopolies, or (b) exercising its police power to regulate traffic or consumption which specifically affects morals or health (as liquor monopolies in Switzerland and South Carolina, and Japanese opium monopolies). (2) Government seeks revenue through the agency of fiscal monopoly such as French and other tobacco, Japanese salt and camphor. (3) Private per-

sons or companies seek, through monopoly, larger or surer profits in enhanced price, or greater stability of market conditions.

Public welfare and fiscal monopolies created by government raise questions of expediency, but do not in principle conflict with the interests of society. But a sellers' monopoly which seeks by limiting supply to realize exceptional profits essentially antagonizes the interests of consumers. Also a buyers' monopoly which depresses the price of products (for which it controls demand) affects injuriously the producers. A meat packers' monopoly might realize monopoly profits both by exacting high prices for meat and by paying low prices for animals. Aside from questions of price, possible evils from monopoly concern discrimination, "unfair practices" to suppress competition, inefficient service, tyranny over tastes, possibly excessive power over laborers.

Monopoly Profits and Monopoly Price.—Monopoly profits are the portion of net receipts—total or per unit—which accrue by virtue of monopoly power. They are, not total net receipts, but the excess over those net receipts which might be realized without monopoly power. This excess arises from two sources. (1) Possible economies result from reducing expenses for plant, administration, advertising, etc., or from increasing efficiency alleged to result from costly experimentation which would be impracticable if competitors might share rewards. (2) The margin of profit is enlarged by raising price to consumers, possibly also by depressing prices of materials or labor used. Monopoly profits from each source depend on many factors which vary from industry to industry.

Monopoly price is the price which yields the largest aggregate monopoly profits on total sales: *i. e.*, a price determined with reference solely to the monopolist's pecuniary interests. Differing conditions radically affect the method of its determination. If units of the monopolized article be definitely limited in number— *e. g.*, paintings by Rembrandt— the monopolist exacts the maximum price for each unit. But if the number of units may be indefinitely increased—*e. g.*, bottles of mineral water from a monopolized source—he selects the price which realizes the greatest sum of net profits from total sales. A higher price would yield greater profit per bottle, but would reduce sales and lessen aggregate profits. A lower price would increase the sales, but lower profits per bottle would give a smaller aggregate sum. If additional bottles were obtained at diminishing cost or if slight reductions of price elicited rapid increase of purchases, the tendency would be towards low prices. Conversely, if additional bottles were produced at increasing costs, or if the reduced price caused little expansion of sales, conditions would be unfavorable to lowering prices.

Limitations.—Legal limitations proceeding from legislative enactment and judicial interpretation, are fundamental for public welfare and fiscal monopolies. Crucial importance attaches to judicial interpretations based on precedents of common law which may rest back on obsolete economic and social conditions. Natural limits of monopoly inhere in the potentialities of competition, substitution, abstinence, popular hostility— all varying according to nature and products of monopoly. A monopoly price greatly above cost of production risks provoking competition (unless the monopoly is complete) or diverting consumers to use less costly substitutes or to abstain from gratification; or it arouses popular hostility and consequent government interference. Buyers' monopolies meet limits in prices so low as to discourage the production of the goods; shippers' monopolies in rates so high as to exclude their patrons from markets accessible to other localities served by other shippers. An intelligent monopolist must weigh ultimate loss through such considerations against larger immediate gains.

Forms.—According to Professor Ely's apt analysis, all monopolies spring from natural or social arrangements. Natural monopolies arise from, (1) a limited supply of raw material, (2) properties inherent in the business, (3) secrecy of process. Control of most iron ore deposits of superior quality under a high tariff is a conceivable basis of iron and steel monopoly. Owing to inherent properties, most industries involving transport service—railways, tramways, telegraphs, telephones, gas, electric light and power—naturally tend towards monopoly, as being economical, efficient and convenient. Social arrangements cause general welfare monopolies such as patents, copyrights, trade marks, and fiscal monopolies, including tobacco, matches, salt, camphor, and kindred opium and alcoholic consumption monopolies. Special privilege monopolies, based on public or private favoritism, are specially odious. The Tudor monopolies, created by letters patent, are noted examples. Popular indignation against them secured their revocation by Elizabeth and first brought modern monopolies into prominence. Railway discriminations such as special rates, rebates, preferences in supplying cars, prompt forwarding, account for most monopolies due to private favoritism. They, like growing importance of buyers' monopolies, result from recent economic changes.

See Business, Government Restriction of; Conservation; Copyright; Corners in Commodities; Corporation, Public; Municipal Ownership; Patents; Trade-Mark; Trusts.

References: R. T. Ely, *Monopolies and Trusts* (1900), *Studies in the Evolution of Industrial Society* (1903), chs. iv, v; C. W. Baker, *Monopolies and the People* (1900); J. E. Le Rossignol, *Monopolies Past and Present* (1901);

A. Marshall, *Principles of Econ.* (6th ed., 1910), Bk. V, ch. xiv; J. S. Nicholson, *Principles of Pol. Economy* (1897), II, Bk. III, ch. vii; H. R. Seager, *Economics* (1909), chs. ix, xviii, xx–xxii; F. W. Taussig, *Principles of Economics* (1911), I, ch. xv, II, chs. xlv, lxiii; A. T. Hadley, *Economics* (1897), ch. vi.; Conrad and others, Eds., *Handwörterbuch der Staatswissenschaften* (3rd ed., 1910), VI, 769–773; E. W. Bemis, *Municipal Monopolies* (1899); L. Darwin, *Municipal Trade* (1903), *Municipal Ownership* (1907); R. P. Porter, *Dangers of Municipal Trading* (1907); D. F. Wilcox, *Municipal Franchises* (1910), I, chs. iii, ix (1911), II, chs. xxviii, xlvi.

E. H. Vickers.

MONROE, JAMES. James Monroe, fifth President of the United States, was born in Westmoreland county, Virginia, April 28, 1758, and died July 4, 1831. In 1782, he was elected a member of the Virginia legislature and the next year entered Congress, serving for three years. He stood firmly for the free navigation of the Mississippi. In the Virginia convention, he opposed the Federal Constitution, because of its tendency towards too great centralization. From 1790 to 1794 he was in the United States Senate and opposed the policies of the administration. Notwithstanding this he was appointed, 1794, minister to France, but his mission was regarded as a failure and he was recalled, 1796. From 1799 to 1802, he was governor of Virginia. As special minister to France in 1803, he coöperated with Robert R. Livingston in the purchase of Louisiana. Prior to his appointment as Secretary of State by President Madison, he served again in the legislature and as governor of Virginia. After the burning of the city of Washington, 1814, Monroe served also as Secretary of War and in this capacity improved the conduct of military affairs. As President of the United States his name is always associated with the purchase of Florida; recognition of the independence of the South American States; and the assertion of the Monroe Doctrine.

See Democratic-Republican Party; France, Diplomatic Relations with; Florida Annexation; Great Britain, Diplomatic Relations with; Louisiana Annexation; Monroe Doctrine; Virginia.

References: W. O. Stoddard, *Life of James Monroe* (1887); D. C. Gilman, *James Monroe in his Relation to the Political Service* (1883); James Monroe, *Writings*, S. M. Hamilton, Ed. (1898–1905).

James A. James.

MONROE DOCTRINE

The term Monroe Doctrine originated with certain statements made by President Monroe in his annual message of Dec. 2, 1823; but in the course of ninety years it has frequently been used for policies and conditions which were not in Monroe's mind. The commonly received interpretation of the doctrine has varied from decade to decade; and there have been several periods in which it was not invoked at all. Admiral Mahan says of it: "The virtue of the Monroe Doctrine, without which it would die deservedly. is that through its correspondence with national necessities it possesses the inherent principle of life, which adapts itself with the flexibility of a growing plant to the successive conditions it encounters."

Background.—The Monroe Doctrine had its origin in the effort to reconstruct Europe after the end of the disturbances of the Napoleonic wars, which set the powers of Europe on the task of reëstablishing a balance of power and extinguishing the spirit of revolution. In the Congress of Vienna, therefore, in 1814 and 1815, France was received as one of the five great powers along with Russia, Austria, Prussia and Great Britain. And then by the so-called Holy Alliance of Sept. 26, 1815 (which, however, did not include Great Britain), the powers undertook to crush out by joint action any revolution that might threaten any one of them. This principle was invoked against Naples in 1820, and against Spain in 1823.

A revolution of the Spanish-American colonies began with the attempt of the French to annex the Spanish colonial empire, from 1807 to 1812. The revolution was a denial of the great principle of legitimate monarchy; hence after the rehabilitation of the Spanish monarchy in 1823, the Government asked of the allied sovereigns aid in recovering the colonies. The only power in Europe which had both the fleet and the inclination to enter into these American complications was France, which expected some kind of territorial advantage.

Russia was in two ways involved in American affairs. (1) Ever since 1784 there had been a Russian settlement in Alaska, and posts had been planted at various points down the northwest coast. The United States, therefore took serious offence, when in 1821, the Russian Government asserted a claim to the whole coast as far south as the 51st parallel, and to a strip of ocean 100 miles wide along shore. (2) In October, 1823, the Russian Government sent out a circular against Spanish American independence, and declared it contrary to the European "political system," which phrase clearly referred to the system of legitimate monarchy.

Occasion.—The United States was deeply committed to the principle that a new body of Latin-American states had appeared. Americans enjoyed relief from the former Spanish restrictions on colonial trade; and the people felt a sincere sympathy with the new republics. In 1822, the United States recognized the independence of several of the new countries (*see* RECOGNITION OF NEW STATES), and exchanged ministers with them. To Secretary John Quincy Adams this seemed so fully to commit the United States that the question whether the colonies be restored to Spain was a kind of denial of his own country's integrity.

In 1823, the restored Spanish Government asked for a conference to consider the Spanish-American situation, to which it was suggested that the United States be invited.

George Canning, British Secretary of State for Foreign Affairs, took alarm at what he thought a movement in favor of French dominion in parts of America; and he proposed to Rush, the American minister in London, to join with him in a declaration that the United States and Great Britain were opposed to any intervention in American affairs by Europe. The objection to intervention fell in with the American doctrine of "the policy of isolation," which dated from the administration of Washington; but the method proposed was out of accord with the doctrine of "no entangling alliances" (*see*) stated by President Jefferson.

Rush, having no instructions on the subject, would go only so far as to agree to a joint declaration with Great Britain, to be conjoined with an acknowledgment of the independence of the Latin-American states. Upon this point Canning hesitated, then grew cooler, and then held off. A declaration was made by the French Government, October 9, that it would take no part in restoring the Spanish colonies to Spain by force. Rush meanwhile wrote home for instructions.

Formulation.—The news of the suggestion of the European intervention and of Canning's overtures reached the United States while the President's message was in preparation. Monroe inclined toward a joint declaration, but was at the same time genuinely alarmed lest somehow the forces of Europe might be directed, not only against Latin-American republics, but against the United States. If a separate declaration were made, he wanted it to sound the war cry of democracy. The leading spirit in the Cabinet was John Quincy Adams, who skillfully steered in the direction of a single declaration, founded not on a danger to republican government but on the superior interest of the United States in all American affairs. He also seized the opportunity to repel the Russian claims to the Northwest. Drafts of the message passed between the Secretary and the President, and the hand of both of them can be seen in the form of the declaration as it appears in the President's message, of Dec. 2, 1823.

Form.—The message clearly states the position of the United States upon three different, though connected questions. (1) In connection with a discussion of the Russian claims to Oregon, the message declares that "the American continents by the free and independent condition which they have assumed, are henceforth not to be considered as subjects for future colonization by any European power." (2) In a different part of the message, in a discussion of the status of the Spanish American states, the President says: "We could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny, by any European power, in any other way than as the manifestation of an unfriendly disposition toward the United States." (3) On the question of the combination of European governments the message reads: "It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness." The term "political system" had been used in the recent Russian dispatch and the clause, undoubtedly, denies the right of European powers to plant monarchical governments in America.

On the other hand Monroe makes three significant limitations: (1) he expressly bases the right of the United States to protest against European intervention upon the practice of the United States to keep outside of all complications in Europe; (2) he disclaims any intention of the United States to interfere with the Latin-American powers in their choice of governments for themselves; (3) he unequivocally says that "with the existing colonies or dependencies of any European power we have not interfered, and shall not interfere."

From the circumstances and the language of the declaration, it is clear that Monroe and his Cabinet by this declaration intended to lay down the principle that America was in three different ways outside the sphere of European government and the European balance of power. (1) The territory of the two Americas, Monroe held to be already absorbed by colonizing nations or by the new independent powers, so that there was no room for any farther territorial claims based on discovery. (2) The governments of the American powers were to be made by their own choice. Monroe had recognized the temporary empire of Iturbide in Mexico and also the Brazilian monarchy, because he held that they rested upon the preference of the Mexican and the Brazilian people; but he protested against any kind of duress being put on the Americans. (3) There was no occasion for foreign expeditions by third parties. Monroe totally denied the right of any

European power to come in as the friend and military supporter of the Spanish power.

Obviously the Monroe Doctrine was intended to be a doctrine of peace, an assertion that the independent powers in America were all able to take care of themselves, and were not to be considered a part of the European combination of powers, or subject to its influence. The immediate danger was not so much the restoration of the Latin American states, as the planting of new European colonies in the midst of those states, which would become the foci of disturbance.

Application, 1823–1845.—Monroe's message, combined with the opposition of Great Britain, put an end to all schemes of intervention. By declining to go hand in hand with Great Britain, the United States indirectly set up a claim to be the leading American power, competent to act in the western hemisphere without the sanction of any European power, and virtually assumed a hegemony in the Americas. The Latin American states seemed inclined to accept this point of view, and in 1826 summoned a congress (*see* PANAMA CONGRESS) in which one topic for deliberation was to be how the pledge of the Monroe Doctrine should be carried out. This led John Quincy Adams as President to take the ground that the Monroe Doctrine meant only that each power was to protect itself by its own means.

Application of the Monroe Doctrine to the Russian claims was quick and potent, for the United States obtained from Russia in 1824, a treaty disclaiming any territorial rights south of 54°, 40′.

For a time the term Monroe Doctrine was little used, because all its objects were for the time reached, partly by the influence of the Doctrine, directly as a natural outcome of the general foreign policy of the United States. With regard to Cuba, it was several times officially announced that the United States would make no objection to the holding of Cuba by Spain, but would oppose the transfer of that island to any other power, not as a breach of the Monroe Doctrine, but simply as contrary to American interests.

Application, 1845 to 1867.—The Monroe Doctrine contained no specific pledge that the United States would refrain from taking the territory of American neighbors, although its spirit was that to disturb the territorial balance would be unhandsome. In 1845 the United States annexed Texas, still claimed as a part of Mexico, and almost at the same moment President Polk called attention to the Monroe Doctrine and added "it should be distinctly announced to the world as our settled policy that no future European colony or dominion should with our consent be planted or established on any part of the North American continent." A year later Polk occupied New Mexico and California; and in 1848 when some of the people of Yucatan proposed to transfer that province of Mexico to the United States, Polk favored it on the ground that otherwise Yucatan might be brought within the European political system.

So far as the Monroe Doctrine viewed the United States as the one leading American power it was abandoned in 1850 when England was recognized as a power entitled to joint supremacy in all questions of an isthmian canal (*see* CLAYTON-BULWER TREATY). The administration still more departed from its spirit by repeated efforts, from 1851 to 1860, to occupy parts of Central America and of Mexico, and to bully Spain into ceding Cuba.

During the Civil War the principal danger against which the Monroe Doctrine was directed came about through the invasion of Mexico by France and the setting up of a European monarchy in that country by military force (*see* MAXIMILIAN'S EMPIRE) against the will of the people. Nevertheless Secretary Seward in his correspondence nowhere refers to the Monroe Doctrine; but eventually he put such pressure upon the French that they withdrew from Mexico (*see* MEXICO, DIPLOMATIC RELATIONS WITH).

Application, 1867 to 1894.—The doctrine that European powers must keep their hands off America, combined with a growing dislike of European colonies, was fortified by several incidents after the Civil War. The annexation of Alaska (*see*) in 1867 eliminated one of those colonizing powers. An unsuccessful project for the annexation of the Danish Islands (*see*) would have erased another. The Clayton-Bulwer Treaty was assailed because it recognized a joint interest with Great Britain in an American concern, a hostility strengthened by the formation of the Dominion of Canada (*see*) in 1867, just when many Americans looked forward to the annexation of Canada. American influence was pushed hard in Latin America, as in the controversy between Chili and Peru in 1881 (*see* SOUTH AMERICA, DIPLOMATIC RELATIONS WITH); in the first Pan American Congress (*see*) of 1890; in the troubles with Chili in 1891 and 1892; and in the new Brazilian Republic in 1894.

The main question of American diplomacy during this period was that of the proposed water route across the isthmus (*see* CANAL DIPLOMACY; FRENCH PANAMA CANAL; PANAMA CANAL) which involved the application of French capital under a French charter. Nevertheless the Monroe Doctrine was not directly invoked in that controversy.

The Olney Doctrine.—The country was hence taken by surprise when in dispatches made public in December, 1905, Secretary Olney, upon a boundary dispute between British Guiana and Venezuela, asserted that the Monroe Doctrine contained the following principles, though none of them had even been pre-

viously set forth. (1) The existing European colonies in America have no right to be; "any permanent political union between an European and an American state is unnatural and inexpedient;" "the interests of Europe are irreconcilably diverse from those of America." (2) The United States possesses the hegemony of America. "To-day the United States is practically the sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition." (3) The Monroe Doctrine is a part of international law, known to all nations, and hence to disregard it is an international offense. (4) The Monroe Doctrine forbids a refusal to arbitrate territorial controversies between European colonies and Latin-American nations, inasmuch as any territory unreasonably claimed would thereby be transferred to the political system of Europe. (5) The United States would be justified in making war to rectify this infraction of the Monroe Doctrine.

The immediate effect of this new doctrine was that Great Britain yielded the disputed point; but the moral effect was diminished when three years later the United States annexed Cuba (temporarily) and Porto Rico by force of arms, and thus broke off the last fragment of the old Spanish-American empire. The war also brought about the annexation of the Philippine Islands, the first territory taken by the United States distinctly outside the American sphere of operations. In 1900, the United States joined in the expedition to Peking and took a prominent part in the settlement of the Chinese difficulties. Thenceforward it was no longer possible to hold that the United States was outside of the interests of European powers and for that reason could assert a special status in America. On the other hand, in 1902 Great Britain freely gave up the Clayton-Bulwer Treaty (*see* CANAL DIPLOMACY), and with it the long standing claim of a joint interest in the canal route.

The Drago Doctrine.—Whatever the original grounds of the Monroe Doctrine, and whatever new principles and applications may have been brought in, all nations recognized that it was the fixed purpose of the United States to prevent any conquest of American territory as a basis for European colonies. Probably the doctrine would be applied if any American country should voluntarily try to be incorporated with a European empire.

This principle clearly stands in the way of the commonest method of bringing to book weak powers which injure or defy strong powers, *viz.*, the occupation of their ports. Several of the Latin American powers have interfered with foreign capital and foreign individuals who come into their territory under promise of protection. This gives rise to complaints and demands for redress and for money indemnity. In 1901 Germany wished to deal with Venezuela and bombarded a Venezuelan port (*see* GERMANY, DIPLOMATIC RELATIONS WITH). Unofficial or at least unpublished remonstrances were made from Washington, which caused the German Government to give assurance that it would not land troops nor occupy the country. In 1905, on the ground that otherwise creditor nations would take possession of San Domingo (*see*), President Roosevelt by an agreement not ratified by the Senate put American officials into the custom houses of that country and administered its finance. Similar overtures were made toward Hayti and toward some of the Central American powers in 1912 by President Taft, and in 1913 by President Wilson; but the Senate drew back from assuming that responsibility (*see* DOLLAR DIPLOMACY).

A renowned Latin American publicist has laid down the principle that no state ought to be invaded for the collection of money claims (*see* DRAGO DOCTRINE); and that doctrine has been pressed upon the United States in the successive Pan American Congresses (*see*) of 1890, 1901, 1906 and 1910. President Roosevelt gave his formal adherence to the Drago doctrine, and European nations reasonably look to the United States to find some way of securing reparation of their injuries and claims, so long as this country holds it as part of the Monroe Doctrine that such reparation may not be directly sought. Such a use of the Monroe Doctrine would make the United States responsible for the good behavior of all the Latin American countries. This question was much accented from 1911 to 1914 by revolutions in Mexico, involving the property, lives and interest of citizens of many countries, and the United States, by fending off other powers, made itself responsible for securing good order in Mexico.

In July, 1912, Senator Lodge introduced into the Senate a resolution declaring that no holder of lands in other American states ought to be allowed to transfer them to any persons from foreign countries, with a view to establishing a military or naval base. This was hailed as an extension of the Monroe Doctrine.

See ANNEXATIONS TO THE UNITED STATES; ARBITRATION AND PEACE; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; CANAL DIPLOMACY; CENTRAL AMERICA; CLAIMS, INTERNATIONAL; COLONIZATION, PRINCIPLES OF; CUBA AND CUBAN DIPLOMACY; DRAGO DOCTRINE; FOREIGN POLICY OF THE UNITED STATES; GERMANY, DIPLOMATIC RELATIONS WITH; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; HAGUE CONFERENCES; IMPERIALISM; INTERVENTION; LATIN AMERICA; NICARAGUA CANAL POLICY; PAN AMERICAN CONGRESSES; RECOGNITION OF NEW STATES; SOUTH AMERICA, DIPLOMATIC RELATIONS WITH; SPAIN, DIPLOMATIC RELATIONS WITH; and Latin American countries by name.

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macy (1900); W. F. Reddaway, *Monroe Doctrine* (1898); J. B. Moore, *Am. Diplomacy* (1905), ch. vi, *Digest of Int. Law* (1906), VI, ch. xx, VII, §§ 944, 967; A. C. Coolidge, *U. S. as a World Power* (1908), ch. v.; F. J. Turner, *Rise of the New West* (1906), ch. xii; F. L. Paxson, *Independence of the South Am. Republics* (1903); W. F. Johnson, *Four Centuries of the Panama Canal* (1906); F. E. Chadwick, *U. S. and Spain, Diplomacy* (1909), I, chs. viii–x; A. B. Hart, *Foundation of Am. Foreign Policy* (1901), ch. vii, "Monroe Doctrine in its Territorial Extent and Application" in U. S. Naval Institute, *Proceedings*, XXXII (1906), 753; A. G. Stapleton, *Political Life of George Canning* (1831); H. W. V. Temperley, *George Canning* (1905), chs. viii–x; *Am. Hist. Leaflets*, Nos. 4, 34 (1892–1910); M. Hill, *Liberty Documents* (1901), ch. xx; J. Q. Adams, *Memoirs* (1903), iv; R. Rush, *Residence at the Court of London, 1819–1825* (1873); D. Webster, *Works* (1851), III; M. Palacio, *Outline of the Revolution of Spanish-America* (1817); W. E. Curtis, *U. S. and Foreign Powers* (1899); L. M. Keasbey, *Nicaragua Canal and Monroe Doctrine* (1896); J. B. Henderson, *Am. Diplomatic Questions* (1901), Pt. IV; T. J. Lawrence, *Essays on some Disputed Questions of Int. Law* (2d ed., 1885); T. Lyman, *Diplomacy of the U. S.* (2d ed., 1828); T. B. Edgington, *Monroe Doctrine* (1904); J. T. Morse, Jr., *John Quincy Adams* (rev. ed., 1898), ch. ii.; D. C. Gilman, *James Monroe* (rev. ed., 1900), with bibliography; T. Roosevelt, *American Ideals* (1904), ch. xi; W. C. Ford "J. Q. Adams and the Monroe Doctrine," in *Am. Hist. Rev.*, VII, 676–696, VIII, 28–52 (1902); A. T. Mahan, *Interest of America in International Conditions* (1900), *Lessons of the War with Spain* (1899), 207–241; J. A. Kasson, *Evolution of the Constitution* (1904), 221–273; J. B. McMaster, *With the Fathers* (1896), 1–54; J. H. Latané, *Diplomatic Relations with Spanish America* (1900); S. M. Hamilton, *Monroe Doctrine* (1896); M. D. de Beaumarchais, *La Doctrine de Monroe* (1898); Hector Petin, *Les États-Unis et la doctrine de Monroe* (1901); H. Bingham, *The Monroe Doctrine an Obsolete Shibboleth* (1913); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 198, 257, 267; A. B. Hart, *Manual* (1908), §§ 38, **77, 145, 182, 183.**

ALBERT BUSHNELL HART.

MONTANA. West of the Rocky Mountains Montana's territory became successively a part of Oregon territory in 1848, of Washington territory in 1853, and of Idaho territory in 1863. The eastern portion was included in the district and territory of Louisiana in 1804 and 1805, in the territory of Missouri in 1812, in the Indian country in 1834, in the territory of Nebraska in 1854. Montana territory was organized in 1864 (*see* BOUNDARIES, INTERIOR). Troubles with lawless elements, who had to be overawed by vigilance committees, and with raiding and warring Indians, retarded settlement. After 1877 the era of peaceful development began. The territory was admitted as a state on November 8, 1889.

The constitution provides for executive, legislative, and judicial departments. The supreme executive power is vested in the governor, "who shall see that the laws are faithfully executed." He is commander-in-chief of the militia, appoints various officers with the consent of the senate, and fills vacancies in the chief state offices by appointment. He has the power to grant pardons, to remit fines and forfeitures, to commute punishments, provided his acts in these matters are approved by a board of pardons, consisting of the secretary of state, attorney general, and state auditor. He has a general suspensive veto and may likewise veto items in appropriation bills. His veto may be overcome by a two-thirds vote of the members present in each house. The governor, attorney general, and secretary of state constitute a board of prison commissioners and a board of examiners. These three officers together with the superintendent of public instruction administer the public lands as a board of land commissioners. The general control and supervision of the state university and the various other state educational institutions is vested in a state board of education consisting of the governor, attorney general, and superintendent of public instruction, together with eight members appointed by the governor for terms of four years. All financial powers, however, were transferred from the state board of education to the state board of examiners by the terms of an act passed in 1909. The governor, secretary of state, treasurer, auditor, and attorney general constitute a state board of equalization for the adjustment of valuations of taxable property among the several counties.

The legislative assembly consists of a senate, whose members are elected for terms of four years in such manner that one-half retire in each biennium, and a house of representatives, the members of which are elected for terms of two years. Each county constitutes a senatorial district, while representative districts may be altered by new apportionments after each census. Regular sessions of the legislature are limited to sixty days, beginning on the first Monday of January in odd numbered years.

The general authority of the legislative assembly was limited in 1906 by the passage of a constitutional amendment for the initiative (*see*) and referendum (*see*). Eight per cent of the legal voters of the state may initiate measures, provided that eight per cent of the legal voters in each of two-fifths of the counties have signed the petition. The referendum may be ordered either by act of the legislature or by petition signed by five per cent of the legal voters of the state, provided that five per

cent of the legal voters in each of two-fifths of the counties have signed the petition.

The judicial power of the state is vested in the senate as a court of impeachment, a supreme court, district courts, justices of the peace, and other inferior municipal courts.

Local governmental divisions include counties, townships, precincts, school and road districts, and municipalities. County commissioners are three in number and hold office for four years. Municipal corporations are classified by population, with differing lists of officers. Under a law passed in 1909 cities may adopt the commission form of government (*see* COMMISSION SYSTEM OF CITY GOVERNMENT), and Missoula did so in 1911. Bozeman voted adversely on the system in 1912.

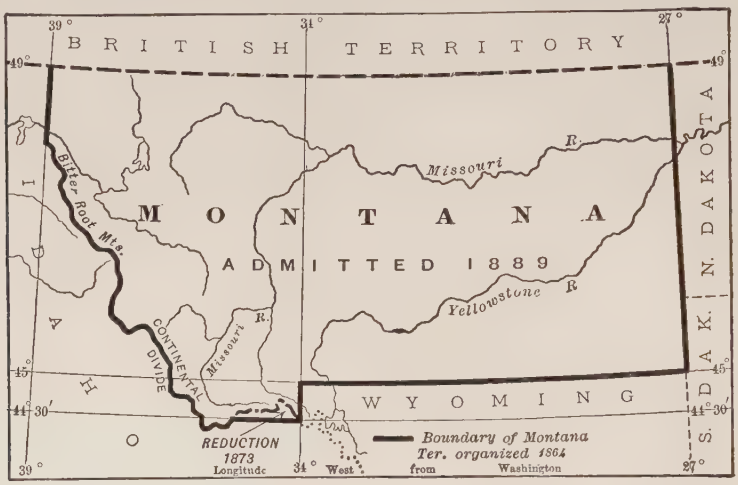
Universal manhood suffrage exists. Women hold school offices and vote in school elections. Women who are taxpayers and have the qualifications for the right of suffrage required of men are privileged to vote upon all questions submitted to the vote of taxpayers.

Public, free, common schools are maintained in each organized district for at least three months in each year. Attendance is compulsory between the ages of eight and fourteen. Special educational institutions for the blind, deaf and mute, orphans, and delinquent children are supported by the state. A state university, a school of mines, a normal school, a college of agriculture and mechanic arts, comprise the institutions of higher education. Funds derived from the public lands appropriated by Congress for the purpose very largely support the educational system.

Democrats, or Democrats and Populists, have mostly controlled the state administration. Republicans were successful in 1893. They also elected their state officers, except the governor, in 1908. The entire state ticket elected in 1912 was Democratic. The electoral vote was cast for the Republican ticket in 1892, for the Democratic in 1896 and 1900, for the Republican in 1904 and 1908, and for the Democratic in 1912.

Political issues lately prominent include corporation control, primary election laws (especially for United States Senators), employers' liability, reform of taxation system, conservation of natural resources, the relation of state and federal conservation. Population in 1900 was 376,053.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS.



BOUNDARIES OF THE STATE OF MONTANA, SHOWING TERRITORIAL CHANGES

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MONTESQUIEU, POLITICAL THEORIES OF. See POLITICAL THEORIES OF CONTINENTAL PUBLICISTS.

MONUMENTS, PUBLIC. Objects, generally masonry structures, which are maintained in public places to commemorate men, times, or events. Expressing sentiment, they originate in impulses from the most varied sources and have a correspondingly varied relation to governmental machinery. The final responsibility for their design rests on those who pay for them, who may be private individuals, by gift or general subscription, or any governmental appropriating body; but the responsibility is generally delegated, for each monument, to a special committee or commission with full powers. This, in turn, normally employs a designer, usually an architect or sculptor, often selected by competition, and fixes upon him the professional responsibility for the design. There is a growing tendency to apply to the designs a critical scrutiny on behalf of

the public, independent of the party furnishing the funds. The usual means of applying this scrutiny is an art commission (*see*), having a more or less complete veto power as to the erection of monuments and certain other works of art in case the designs are not approved. Among notable monuments erected outside of public funds, are the Bunker Hill, Grant's Tomb, Lincoln (Chicago), Labor (San Francisco); among the most striking public structures are the Washington Monument (Washington) and the Lee Monument (Richmond).

See ART COMMISSIONS; BOULEVARD; CITY PLANNING. FREDERICK LAW OLMSTED.

MOREY LETTER. A letter forged over the name of James A. Garfield (*see*) Republican presidential candidate, published in a New York paper called *Truth* shortly before the election of 1880, favoring the employment of cheap Chinese labor, addressed to a fictitious "H. L. Morey, Employers' Union, Lynn, Massachusetts." O. C. H.

MORNING HOUR. The morning hour is one of the stages in the regular order of business in Congress (Rule XXIV, § 4), and is devoted to the consideration of bills called up by committees from the House calendar, that is, public bills other than those relating to the revenue or appropriations. See CALENDAR WEDNESDAY; RULES OF CONGRESS. **References:** A. C. Hinds, *Precedents of the House of Representatives* (1907–1908), IV, §§ 3118–3135, 3141; C. A. Beard, *Am. Government and Politics* (1910), 286. A. N. H.

MORRILL GRANT FOR AGRICULTURAL COLLEGES. In 1857, Representative Morrill of Vermont (later Senator) introduced into Congress a bill to provide for the founding of colleges in the different states for the benefit of agriculture and the mechanic arts. The bill had a devious history; was passed by Congress in 1859 and vetoed by President Buchanan. In 1861, Mr. Morrill again introduced the bill, and it became a law by the signature of President Lincoln in 1862. Subsequent acts have supplemented and extended it. See AGRICULTURE, RELATIONS OF GOVERNMENT TO; EDUCATION, AGRICULTURAL; EDUCATIONAL LAND GRANTS. L. H. B.

MORRILL, JUSTIN SMITH. Justin S. Morrill (1810–1898) was born at Strafford, Vt., April 14, 1810. He was engaged in business until 1848, when he devoted himself to agriculture. He was elected to Congress in 1855, and sat in the House as a Republican until 1867. In 1857 he introduced a bill for the establishment of state colleges of agriculture and mechanic arts, and making grants of public land for their support. The measure finally became law in 1861. He was also the chief author of the "Morrill tariff" of March, 1861, embodying the new Republican theory of protection; but as the bill had been framed in the spring of 1860, when civil war was not looked for, it failed to meet the needs of the treasury for revenue. He strongly opposed the issuance of legal tender notes. In 1867 he was elected United States Senator from Vermont, and held the seat until his death in 1898. He was long chairman of the Senate committee on finance, and was looked upon as an authority on financial questions. In the tariff debates of 1883 he was one of the most prominent champions of protection. He died at Washington, December 28, 1898. See MORRILL GRANT FOR AGRICULTURAL COLLEGES. **References:** D. R. Dewey, *Financial Hist. of the U. S.* (1907), ch. xi, xviii; F. W. Taussig, *Tariff Hist. of the U. S.* (1910); E. Stanwood, *American Tariff Controversies* (1903). W. MacD.

MORRILL TARIFF. The Morrill tariff was enacted March 2, 1861, receiving its designation from Justin S. Morrill, Representative from Vermont and chairman of the House committee on ways and means. Duties had been lowered by the tariff of 1857, but the panic of that year and increasing expenditures led to treasury deficits. The new act, as measured by later standards, was but moderately protectionist in character. Passed by the Republican House before the presidential election of 1860, it was in line with the platform of that year, and undoubtedly served a political purpose in winning support in manufacturing states for the Republican ticket. The rates were substantially those of the Walker tariff of 1846, higher, to be sure, than those of 1857, but later regarded as representative of free trade Democracy. The protectionist principle, however, was emphasized in the reintroduction of specific duties (*see*) on many commodities which were subject to undervaluation and fraud. As the Civil War broke out shortly after the passage of the act, and new legislation was required, the Morrill tariff had but a brief existence. See MORRILL, JUSTIN S.; REPUBLICAN PARTY; TARIFF LEGISLATION, FRAMING OF; TARIFF POLICY OF THE UNITED STATES. **Reference:** E. Stanwood, *Am. Tariff Controversies* (1903), II, 120–126. D. R. D.

MORRIS, GOUVERNEUR. Gouverneur Morris (1752–1816), financier and diplomatist, was born at Morrisania, N. Y. January 31, 1752. In 1771 he was admitted to the bar. At the beginning of the struggle with Great Britain he opposed radical and violent measures, and did not at once identify himself with the patriotic cause. He was a prominent member, however, of the New York provincial congress of 1775; and in 1777 was chairman of the committee which drafted a state constitution. In the same year he became a member of the Continental Congress, where he served

on numerous important committees, and drew up the report and instructions on which the treaty of 1783 was principally based. In 1779 he was defeated for reëlection, but in 1780 became assistant financier under Robert Morris, and aided largely in the establishment of the Bank of North America (*see*). In the Federal Convention of 1787 he sided with the Federalists, and was chairman of the committee which gave to the Constitution its final form. In 1788 he travelled abroad, and in 1792 was appointed minister to France, but in 1794, after the dismissal of Genet, was recalled at the request of France. From 1800 to 1803 he was a Senator from New York. He died at Morrisania, November 6, 1816. See FEDERAL CONVENTION. References: A. C. Morris, *Diary and Letters of Gouverneur Morris* (1888); J. Sparks, *Life of Gouverneur Morris* (1832); T. Roosevelt, *Gouverneur Morris* (rev. ed., 1898).

W. MACD.

MORRIS, ROBERT. Robert Morris (1734–1806) was born at Liverpool, England, January 20 (O. S.), 1734. In 1748 he came to America and engaged in business at Philadelphia. He opposed the Stamp Act, signed a non-importation agreement, and in 1766 was appointed port warden. In 1775 he became a member of the Pennsylvania council of safety, and was also elected to the assembly, where he served on the committee of correspondence. In the same year he was chosen a delegate to the Continental Congress, being reëlected in 1776 and 1778. He was opposed to independence, and on July 4 declined to vote on the adoption of the Declaration; but he subsequently signed the document. In 1778 he signed, on behalf of Pennsylvania, the Articles of Confederation.

His business ability and great wealth, gave him, from the first, unusual prominence in Congress, and he was active in measures for the financial support of the government; but he was also severely criticized for profiting by public commercial transactions which were much mixed with private business. In 1781 he was chosen by Congress superintendent of finance, and in the same year organized the Bank of North America (*see*). He retired in 1784. He was a member of the Federal Convention of 1787, and from 1789 to 1795 was a United States Senator. He died in poverty at Philadelphia, May 8, 1806. See TREASURY DEPARTMENT. References: W. G. Sumner, *The Financier and the Finances of the Am. Revolution* (1891); E. B. Oberholtzer, *Robert Morris, Patriot and Financier* (1903).

W. MACD.

MORTGAGE TAXATION. See TAX ON MORTGAGES.

MORTON, OLIVER P. Oliver P. Morton (1823–1877) ranks among the ablest of a notable group of governors of American commonwealths during the period of the Civil War. He participated in the convention at Pittsburgh in February, 1856, by which the foundations were laid for the organization of the national Republican party, and his campaign for the governorship of his native state, Indiana, during the same year, although unsuccessful, contributed distinctly to the consolidation of the party in the Middle West. January 16, 1861, upon the resignation of Governor Lane, Morton, who had been elected in 1860 to the lieutenant-governorship, succeeded. In 1864 he was reëlected, and his tenure of the office continued until he resigned, in 1867, to enter the United States Senate. In the face of strong opposition from southern sympathizers and, at one time, from an adverse legislature, Morton conducted the affairs of the state with remarkable skill and brought it about that Indiana contributed to the maintenance of the Union her full quota of money and of men. During the last decade of his life Morton sat as a Republican member of the national Senate and was recognized as a leader of the radical wing of his party. In 1876 he was a formidable candidate for the Republican presidential nomination, but was defeated by Hayes. See INDIANA; REPUBLICAN PARTY; WAR GOVERNORS. Reference: W. D. Foulke, *Life of Oliver P. Morton* (1899).

F. A. OGG.

MOSQUITO QUESTION. On the coast of Central America, north of the river San Juan, lives a tribe of Indians commonly called the Mosquitos, and the region is occasionally termed Mosquitia, though it has never had an organic political existence. The English, when they made their settlement at Campeachy, about 1655, acquired some small influence over the tribe, the political importance of which is that their region is so near the San Juan river as to command the Nicaraguan route across the isthmus. The British exaggerated their relation with the Mosquito Indians in the period after 1835 when the control of the isthmus seemed desirable. In the Clayton-Bulwer treaty of 1850 (*see*) the British agreed not to plant colonies in Central America; but afterward claimed that their control over the Mosquito Indians antedated the agreement, and therefore they were not controlled by it. The United States denied that the British had established or could establish any territorial claim in the neighborhood of the isthmus through their relations with the Mosquito Indians. The matter was substantially adjusted in 1860 when the English withdrew from pretentions to a special status in Honduras and Nicaragua; but at intervals since the claim has been vainly put forward. By the treaty of 1860 the English conceded that the Mosquito Indians were subjects of Honduras though the British Government retains the right to advise and to some degree protect them. See CLAY-

TON-BULWER TREATY; NICARAGUA CANAL POLICY. References: I. M. Travis, *Clayton-Bulwer Treaty* (1900); L. M. Keasbey, *Nicaragua Canal and Monroe Doctrine* (1896); W. E. Curtis, *U. S. and Foreign Powers* (1899); J. B. Moore, *Digest of Int. Law* (1906), III, §§ 354, 367; bibliography in Channing, Hart and Turner *Guide to Am. Hist.* (1912), § 224; A. B. Hart, *Manual* (1908), § 86. A. B. H.

MOST FAVORED NATION CLAUSE. This is a clause commonly found in modern commercial treaties by which each contracting power agrees to give to the nationals of the other as favorable treatment as has been or may thereafter be given to the nationals of any other state. Its purpose is to prevent discrimination and to gain positive commercial advantages. As commercial treaties have to do not only with commerce in the narrow sense but also with navigation and the civil rights of nationals, it follows that customs tariffs, navigation laws, rights of property, real and personal (including copyrights), and personal rights (including those of residence but not those of extradition), are largely determined by the various subsisting most favored nation clauses. The countries of the world are bound together by a network of commercial treaties, each of which usually contains a most favored nation clause.

During the eighteenth century the clause came into frequent use and is found in the first commercial treaty negotiated by the United States, that of 1778 with France. Several forms of the clause were developed during the last century largely through the divergent tariff policies of the various countries. Productive of much dispute is the so-called simple reciprocal form of the clause:

> The high contracting parties agree that in all that concerns commerce and navigation, favors which either has granted, or may hereafter grant to any other state shall be granted to the other party.

This form is the one which is most favored by Great Britain. It has been interpreted in two ways. Those countries which favor a régime of free trade construe it strictly and claim that all grants under the clause are gratuitous and are extended without reciprocal concessions. Great Britain leads in this contention. On the other hand, countries which hold to a system of protection have taken the position that the most favored nation clause covers only those favors which have been extended to other countries gratuitously and that therefore concessions made with such other countries for a consideration (*e. g.*, reciprocal tariff-concessions) are not covered by the terms, and do not come within the meaning of the clause. This has been the position of the United States since 1817 and, although in recent times it has become somewhat exceptional, the practice of other nations, except Great Britain, has not been so uniformly at variance with it that it can be termed a violation either of international law or of treaty faith.

See COMMERCE, INTERNATIONAL; TREATIES IN INTERNATIONAL LAW.

References: J. R. Herod, *Most Favored Nation Treatment* (1901); S. K. Hornbeck, "Most Favored Nation Clause" in *Am. Jour. of Int. Law* (1909), 395–422; 619–647; 787–827; Visser, "La Clause de la Nation la plus favorisée" in *Revue de Droit Int.* (1902), 66–87; 159–177; 270–280; J. B. Moore, *Digest of Int. Law* (1906), V, 257–319; F. Wharton, *Int. Law Digest* (1887), II, 37–43. J. S. REEVES.

MOVING PICTURES. The development of cineomatograph, or moving pictures, since about 1900, has revolutionized amusements in America. The prices are very low, the attendance enormous, and the influence upon society is portentous. The moving pictures have become the books, the illustrations, and the travel of millions of people. At first the selection of films depended solely upon the proprietors, who often exhibited pictures representing violent crimes, over-exciting adventures, and sometimes indecent scenes. The matter was taken up by a private philanthropic society in New York City, which formed relations with the concerns furnishing the pictures, and persuaded them that the approval of censors would better their market for pictures. Many cities have passed ordinances for the license of moving picture shows authorizing the closing of places which continue to show pictures condemned by the proper authority. July 31, 1912, Congress passed a statute forbidding the interstate transportation of moving picture films representing prize fights. See AMUSEMENTS, REGULATION OF; PUBLIC MORALS, CARE OF.

A. B. H.

MUCK-RAKING. A term which gained general currency since 1905 to denote the numerous indiscriminate attacks by newspaper and magazine writers upon men in governmental and financial circles; used also to denote the uncovering of the scandalous and unsavory side of society merely for satisfaction of depraved interest. The term is taken from the description of the man with a "muck rake" in Bunyon's *Pilgrim's Progress.* O. C. H.

MUD-SILL. A contemptuous nickname common in the South, just before and during the Civil War, applied to the working classes in the North. The reference by a United States Senator to the working classes as "mud-sills" (meaning the foundation of society) gave rise to the phrase. Also "Mud Sill Clubs" was a name given to associations of union workingmen in California in 1858. O. C. H.

MUGWUMPS. The term "mugwumps" was applied to the independent Republicans in 1884, who refused to support the candidacy of James

G. Blaine (*see*) for President. The name has come to be applied to any independent voter. The opposition to Blaine was mainly caused by his attitude toward certain reforms, especially those in the civil service. The reformers supported George F. Edmunds (*see*) in the convention, and after the nomination of Blaine, some supported the nominee, but the Mugwumps joined with the Democracy, and supported Cleveland. Among the Mugwumps were such prominent men as George William Curtis, Thomas Wentworth Higginson, Charles W. Eliot, and others. Blaine was accused of bringing about the defeat of appropriations for the civil service commission in Grant's administration; being a professional politician and spoilsman; and in general of representing low ideals in public life. Cleveland received the Mugwump vote in New York, and this was enough to make him President, since a change of 575 votes in that state would have changed the result of the election. **See** REPUBLICAN PARTY. **References:** J. A. Woodburn, *Pol. Parties and Party Problems* (1903), 141; E. E. Sparks, *National Development* (1907), 337; E. Stanwood, *Hist. of the Presidency* (1898), ch. xxvii.

T. N. H.

MUHLENBERG, FREDERICK AUGUSTUS CONRAD. Frederick A. C. Muhlenberg (1750–1801) was born at New Providence (now Trappe), Pa., January 1, 1750. He was educated in Germany, and in 1770 was ordained to the Lutheran ministry. He was pastor of a Lutheran church in New York City from 1773 to 1776, being then obliged to leave on account of his sympathy with the patriot cause. He removed to Pennsylvania, and continued in ministerial work until 1779, when he was elected a delegate to the Continental Congress in order that the German element in the state might have a representative. He then retired from the ministry, and amassed a fortune in business. He was treasurer of Pennsylvania, twice speaker of the lower house of the legislature, and president of the convention which ratified the Federal Constitution. In 1789 he was elected to Congress, and was at once chosen Speaker of the House, filling that office from 1789 to 1791 and 1793 to 1795, during the latter term being allied with the Republicans. April 29, 1796, his vote as chairman of the committee of the whole achieved the approval of the Jay treaty by the House. His membership in Congress ceased in 1797. He died at Lancaster, Pa., June 4, 1801. **See** SPEAKER OF THE HOUSE. **Reference:** M. P. *House* (1896).

W. MACD.

MULFORD, ELISHA. Elisha Mulford (1833–1885) was born at Montrose, Pa., November 19, 1833. He studied law and theology in this country and in Europe, and in 1862 was ordained a priest of the Protestant Episcopal church. He withdrew from active ministerial service in 1864 to engage in literary work. From 1877 to 1881 he was in charge of a mission at Friendsville, Pa., and then removed to Cambridge, where he lectured on apologetics at the Episcopal Theological School. His fame as a publicist rests chiefly upon a volume entitled *The State* (1870), a theoretical discussion of the state based in part upon Trendelenburg and Bluntschli, and uniting, in some of its views, the philosophy of Hegel and the principles of Christianity. It is one of the earliest systematic discussions by an American writer of the theory of politics, and one of the most thoughtful products of the new national spirit which followed the Civil War. Mulford died at Cambridge, December 9, 1885. **See** POLITICAL THEORIES OF AMERICAN PUBLICISTS, RECENT. **References:** H. E. Scudder, "Elisha Mulford" in *Atlantic*, LVII (1886), 362–368; T. T. Munger, "Elisha Mulford" in *Century*, XIII (1886), 888–895.

W. MACD.

MULLIGAN LETTERS. A series of letters between James G. Blaine and Warren Fisher of Boston, brought to public notice by Mulligan, Fisher's bookkeeper, for the purpose of confirming charges of corruption brought against Blaine in his alleged connection with the Little Rock and Fort Smith Railroad; and which became an important factor in the Republican nominating convention of 1876 and the presidential campaign of 1884. **See** BLAINE, JAMES G.; REPUBLICAN PARTY.

O. C. H.

MULTIPLE STANDARD. This refers to a scheme whereby a variety of commodities instead of gold shall be used as a standard of value. In operation it would provide that records of prices of certain commodities be officially determined at stated periods, and that a debtor should pay his creditor the sum which would purchase a quantity of commodities exactly equivalent in amount to that which might have been purchased at the price level at the time the debt was incurred. **See** MONEY, THEORY OF; SILVER COINAGE CONTROVERSY. **References:** W. S. Jevons, *Money and the Mechanism of Exchange* (1883), 328–333; F. W. Taussig, *Principles of* ECONOMICS (1911), I, 302–303.

D. R. D.

MUNICIPAL BOARD. **See** BOARDS, MUNICIPAL.

MUNICIPAL COUNCIL. **See** COUNCIL, MUNICIPAL.

MUNICIPAL FINANCE IN GREAT BRITAIN. **See** LOCAL GOVERNMENT IN ENGLAND.

MUNICIPAL FRANCHISES. Privileges granted and regulations imposed upon individuals or corporations carrying on public utili-

ties enterprises within the municipality. Such franchises are granted either by the state, or by the municipality to which the state has delegated the right. The more important franchise grants apply to transportation, gas, electric lights, telephone, and water supply. See FRANCHISES, CORPORATION; PUBLIC UTILITIES; TELEPHONES, REGULATION OF; TRANSIT IN CITIES; WATER SUPPLY. References: D. F. Wilcox, *Municipal Franchises* (1910–1911); C. L. King, *Regulation of Municipal Utilities* (1912). O. C. H.

MUNICIPAL GOVERNMENT, FUNCTIONS OF

General Classification of Functions.—The functions of city and village government must be distinguished, in the first place, from the national, state, county and town functions that lie behind them, and, in the second place, from the individual and private functions that lie before them. The city sometimes absorbs the functions of the underlying local subdivisions and generally, in the United States, is the agent for the performance of state functions in the locality. The functions peculiar to cities are the result of congestion of population (*see* POPULATION). These functions are for the most part the outgrowth of town functions, so increased in complexity and importance by the conditions of city life as to have lost their original appearance, and, in some cases, their original character. Besides these functions, however, the city has some that are new, and the number increases both with the growth of individual cities and with the passage of time and increasing enlightenment. The mere congestion of population multiplies the coöperations that are convenient and necessary to life; and the advantages to be derived from the organization of such coöperations politically (that is to say, in terms of municipal control) become more and more obvious as a city emerges from its first generation of rapid growth and settles down to a permanent basis of life. As in the case of the individual, a city is at first concerned almost entirely with economic problems, but sooner or later finds itself absorbed in the problems of reproduction.

A description of municipal functions should take into consideration the following classes: (1) underlying functions of local government not resulting from urban conditions; (2) functions performed by municipalities as administrative agents of the central state government; (3) economic functions arising from congestion of population; (4) functions of reproduction arising from congestion of population; (5) secondary functions, which provide the means for fulfilling the functions that are ends in themselves.

Underlying Functions of Local Government.—These include the maintenance of elementary schools, the building of roads and bridges, drainage and the keeping of the peace, which are universal functions. In political communities such as those of New England, the activities of the town (*see*) in its corporate capacity are likely to multiply but in all cases the functions of the rural municipality are comparatively simple. While in many cases the underlying political organization of the town and school district survives the establishment of a municipal government proper, this is not a typical development, especially as cities become large. In most instances, the simple rural functions above described are absorbed by the political organization of the cities and become the basis of great city departments.

Functions Performed by Municipal Corporations as Agents of the Central State Government.—The fact that in American law the city is regarded wholly as the creature of the legislature, except in the comparatively few commonwealths where cities have been given a constitutional status, makes it difficult to delimit with exactness the spheres of state and local government (*see* CITY AND THE STATE). Generally speaking, the administration of justice, the prevention and punishment of crime, the suppression of vice, the protection of the public health against contagious diseases (*see* PUBLIC HEALTH), and the care of the dependent and defective classes (*see* SOCIAL REFORM PROBLEMS), are considered to be state functions, the performance of which is for the most part delegated to the local authorities as agents of the state. Education in its larger aspects is also generally regarded as a state function, but the tendency everywhere in urban communities is for the local government to develop this function far beyond the minimum of efficiency prescribed by the state. Connected with the suppression of vice is the enforcement of the excise law (*see* LIQUOR LEGISLATION) and other restrictive measures calculated to promote morality and to lessen the temptations of youth. In this field there is frequently a division of responsibility between the local authorities proper and the immediate agents of the central government. In most American communities the state functions just described are performed in large part by the county governments; and it is only in a very few cases that the county government (*see*) has been completely absorbed by the city government. In these exceptional cases the city governments exercise the further function of keeping the records of title to property and of leases, contracts and mortgages, thus performing a state

function of universal importance which lies at the very basis of industrial life and the orderly business relations of men (*see* SOCIAL REFORM PROBLEMS).

Economic Functions Arising out of the Necessities of Congested Life.—A city is primarily an economic unit and the opportunity for profit is the driving force that makes cities grow. It is fundamentally because men, by means of aggregation, intimate organization and coöperation in cities are able to get more economic return for the efforts put forth than they could by similar efforts if widely scattered and unorganized, that they flock together in urban communities (*see* CONGESTION IN CITIES). Along with the many economic advantages of city life go certain important economic disadvantages which must be overcome. It is this fact that gives rise to what we have called the city's economic functions. These may be classified as follows:

(1) Most obvious of all and lying at the very heart of the municipal problem is the laying out of the city's plan. Heretofore this function has been left largely to private or individual initiative in American cities. It is now being recognized, however, that upon the general groundwork of the city's plan depends in great measure the industrial as well as the aesthetic economies of city life. City planning includes the laying out of streets and avenues, the reservation of areas for public grounds, the grouping of public buildings and, in general, the making of the city map in the largest sense of that term (*see* CITY PLANNING).

(2) Next in fundamental importance comes the construction and maintenance of streets. City streets, although they have grown out of rural highways, have become much more complex in their structure and uses, are much more numerous in relation to a given area, and are subjected to burdens of traffic not dreamed of in connection with country roads. The construction and maintenance of streets includes grading, paving, curbing, building of sidewalks, planting and care of shade trees, street cleaning, sprinkling or oiling to keep down the dust, drainage and lighting. This general function also logically includes the construction of bridges and the elimination of grade crossings (*see* PAVEMENTS; STREETS).

(3) Another economic function and one that is almost wholly the outgrowth of city conditions is the removal of the city's wastes. This includes sewerage, the removal of street sweepings, garbage, ashes, refuse and dead animals and even the disposition of the human dead by means of cemeteries and crematories. Naturally the removal of waste is a sheer expense, but in some cases means have been devised, such as sewage farms, reduction plants and incinerators, by which the wastes are made productive (*see* SEWERS; STREET CLEANING).

(4) Another function growing out of the congested conditions of urban life and made practicable by the existence of a complex street system in which permanent fixtures can be placed is the furnishing of public utilities. In American cities the only street utility that is almost everywhere supplied by the city is water for both public and private uses. The other principal utilities such as electric light and power, natural and artificial gas, telephone service, transit and central heating are for the most part supplied by private companies under franchise grants and subject in a greater or less degree to municipal regulation (*see* LIGHTING; WATER SUPPLY).

(5) The city is itself a terminal and within it are located the special terminals required for railroad transportation, water traffic and the local distribution of goods. Railroad terminals, including depots, yards and spur tracks, are seldom owned by the city (*see* PUBLIC OWNERSHIP). Docks (*see*) and harbors (*see*), however, are always the subject of municipal concern and in some cases are wholly or partly owned and operated by the city.

(6) Markets (*see*) are usually maintained by the municipality. The supply and distribution of food products for the daily needs of a great city is a function that is ordinarily left to private initiative, but one that is necessarily subjected to strict municipal supervision (*see* PURE FOOD). The city's function in this respect takes the form of the inspection of dairies and milk, the provision or regulation of slaughter houses and the inspection of meat, fruits, vegetables and other food products offered for sale (*see* INSPECTION AS A FUNCTION OF GOVERNMENT).

(7) One of the most important economic functions of the city is the establishment and enforcement of building regulations. So far as this relates to safety in the construction of big hotels, theaters, office buildings, factories, etc., cities have long recognized their right and duty to approve the plans and supervise construction in a limited way. Little, however, has been done to limit the height of office buildings or to regulate the construction of residences, whether single houses or tenements. The logical development of this function is related to city planning, the provision of public utilities, health, safety from fire, economic efficiency and many other problems of city life (*see* BUILDING LAWS).

(8) A great coöperative function that universally devolves upon the municipality is the maintenance of a department for the purpose of protecting property and life from the ravages of fire. The fire service is one of the most picturesque of all municipal services and its appeal to the civic imagination is so strong as to render it one of the principal sources of civic emotion and intelligent municipal spirit (*see* FIRE PROTECTION).

(9) While the protection of life and property against crime is strictly a state function, nevertheless the police force, with this function

as its central business, always constitutes one of the great city departments. The suppression of vice and the maintenance of public order are particularly necessary in congested communities (*see* DELINQUENCY). The police also have certain important coöperative functions, such as the guidance of traffic in the streets, the assistance of strangers and women and children, the rendering of first aid in case of accident, etc. (*see* POLICE IN AMERICAN CITIES).

(10) The protection of the public health against epidemics is recognized as a state function, but, as in the case of the police, the city health department has many functions that are an outgrowth of the conditions of urban life. These include the abatement of nuisances, the care of the dependent sick, the distribution of medicines and sanitary advice, the maintenance of hospitals, etc. (*see* HEALTH, PUBLIC, REGULATION OF). In many respects the activities of the health department are related to certain other functions such as the removal of wastes, the inspection of food, building regulation and the suppression of vice.

(11) Another function seldom recognized as an economic function is the provision of public recreation for adults. This includes the maintenance of parks, boulevards and speedways, museums, art galleries, bathing beaches and municipal theaters and the furnishing of public concerts and civic pageants. Recreation is here classed as an economic function of cities because the reaction from labor, whether of the hand or of the brain, which seeks an outlet in recreation is checked or diverted into harmful channels by the conditions of city life unless there is some public or coöperative provision for recreation on a large scale along rational lines. The result of such diversion is an impairment of health and a weakening of the economic efficiency of the people (*see* AMUSEMENTS, PUBLIC; PLAYGROUNDS).

Reproductive Functions.—Under this heading are to be classed all of those activities of the city which are the direct outgrowth of the presence of children in the city and the necessity of rearing them from birth to maturity in such a way as to reproduce with each new generation, the physical vigor, the moral stamina and the intelligence and intellectual vigor of the preceding generation. As cities increase in age and size the problems of reproduction press upon them more insistently and the reproductive functions command a continually larger proportion of municipal endeavor. These functions include, first of all, the maintenance of the public schools, which are by far the most expensive single department of city government. As the physical environment of the home narrows by reason of congestion of population, the functions of the public school necessarily expand to include not only the elements of book learning but also the training of the body and the teaching of trades and useful occupations (*see* EDUCATION). Another reproductive function is the provision of public playgrounds (*see*) and the supervision of children's play. It is only within comparatively recent years that any general effort has been made by municipalities to perform this function. Even now, the problem of furnishing play-room and getting play organized to meet the demands of urban conditions has hardly been touched. The city has a special problem in the maintenance of children's institutions for the care of orphans, defectives and dependents and in the maintenance of farms and colonies for the cure of sick children and the reformation of delinquent ones. Juvenile courts (*see* COURT, JUVENILE) play an important function in cities.

Secondary Functions.—Not because of their unimportance, but because they are undertaken for the purpose of enabling the city to perform its other functions such as those already described, taxation, municipal accounting and auditing, inspection and supervision of municipal work, civil service regulation, local primaries and elections and the provision of public buildings are classed as secondary functions. The function of taxation, including the assessment of property and the distribution of the burdens and benefits of government through the budget, is so fundamentally important in its effect upon the economic and moral life of the community as to take first rank, although a secondary function (*see* ASSESSMENT OF TAXES; REVENUE, PUBLIC, COLLECTION OF; TAXATION). The other secondary functions mentioned above are also important, but their importance is practically as a means to an end, namely, the efficient performance of the primary functions of city government.

See BOARDS, MUNICIPAL; CHARTERS, MUNICIPAL; CITY PLANNING; CITY AND THE STATE; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES; LOCAL SELF-GOVERNMENT; MAYOR AND EXECUTIVE POWER IN AMERICAN CITIES; MUNICIPAL GOVERNMENT IN THE UNITED STATES, ORGANIZATION OF; ORDINANCES, MUNICIPAL; POLICE IN AMERICAN CITIES.

References: M. R. Maltbie, "Municipal Functions" in *Municipal Affairs*, II, No. 4 (1898); J. A. Fairlie, *Municipal Administration* (1901), Pt. II; M. N. Baker, *Municipal Engineering and Sanitation* (1901); D. F. Wilcox, *Study of City Government* (1897), ch. ii, *Am. City* (1904), chs. ii-vii; Jane Addams, *Spirit of Youth and the City Streets* (1909); F. J. Goodnow, *City Government* (1904), ch. ii; J. F. Dillon, *Municipal Corporations* (1911), ch. xv–xviii; E. W. Bemis, *Municipal Monopolies* (1899); C. Zeublin, *Am. Municipal Progress* (1902); F. Parsons, *City for the People* (1901); N. Matthews, *City Government of Boston* (1895); Vigilant Committee in Municipal Affairs, *Report* (1877), III, 434–454; *Am. Year Book, 1910,* and year by year.

DELOS F. WILCOX.

MUNICIPAL GOVERNMENT IN CONTINENTAL EUROPE

The French Republic.—The municipal system of the French Republic rests upon the municipal code of 1884 (*"La Loi Municipale du 5 avril, 1884"*), the provisions of which apply to every municipality in France with the single exception of Paris. By the terms of the municipal code the unit of French local government is the commune, a term which includes about 36,000 municipalities ranging in size from large cities like Marseilles and Bordeaux with populations exceeding a quarter of a million to small rural hamlets with less than fifty inhabitants. All communes, large and small, are administered in substantially the same way.

The organ of communal administration is a council which includes a mayor (*see* MAYOR IN EUROPEAN CITIES), one or more assistant mayors (*adjoints*), and a number of councilmen. The councillors are elected by popular vote for a four-year term. The election may be by wards in communes of over 10,000; but except in the great cities councillors are, as a rule, elected at large. The municipal code established manhood suffrage for municipal elections. Any male French citizen, twenty-one years of age, who has been for six months a resident of the commune is entitled to vote. The residence requirement, moreover, does not apply in the case of those who pay any one of the four chief tax rates levied by the municipality, so that a citizen who has his place of business in one commune and his place of residence in another may vote in either, although not in both.

The elections are held on the first Sunday in May, and are conducted by secret ballot; but no official ballots are printed, for no official nominations are made. Each voter is presumed to write his own ballot; but in practice printed ballots, provided by party organizations, are distributed among the voters on election day. To be elected at the first polling a candidate must have received at least one-fourth of the entire registered vote and at least one-half the total polled vote. If these requirements are not fulfilled a supplementary election is held on the Sunday following, and a plurality is sufficient to elect. The elections are, for the most part, conducted on party lines.

The number of councilmen varies with the size of the commune. It is never less than ten, and in the largest cities is uniformly thirty-six, with the exception of Lyons where it is fixed at fifty-four. The councillors, after the election, choose from among their own number a mayor and one or more *adjoints* or assistant mayors. The smallest communes have but one *adjoint;* the largest have twelve. Lyons, as an exceptional case, has seventeen. Both mayor and *adjoints* are chosen for a four-year term, and after being selected, retain their membership in the council. All sit together in the same body, the mayor presiding, and all are unpaid although the mayor may be given an allowance for official expenses. The council holds four regular sessions each year, and special sessions when necessary.

The French municipal council has a wide range of powers, most of which may be exercised only with the approval of the prefect (*see* PREFECT IN FRANCE). It determines the local tax levies; makes the appropriations; exercises a general control over the various municipal departments; and determines most matters of local policy. The actual work of administration and the direct charge of the municipal departments is, however, entrusted to the mayor and *adjoints*.

The mayor of a French city occupies a dual position. On the one hand he is the presiding officer of the council and the administrative head of the commune. In this capacity he prepares the annual budget; makes practically all appointments to municipal offices; and has immediate charge of the local police subject to the supervision of the prefect. On the other hand the mayor is the local agent of the central authorities, directly responsible to the prefect and through him to the minister of the interior. In this capacity he performs a variety of duties connected with the promulgation and enforcement of national laws and decrees; the administration of the laws relating to military service; the enrolment of voters; the registration of births, marriages and deaths; and the working of the educational and poor-relief systems. While the mayor is directly responsible for the performance of all these functions he distributes the work among his *adjoints*. Under the supervision of the *adjoints* are the permanent, paid officials, appointed by the mayor, sometimes after competitive examination. These are the real factors in local administration. The actual administrative power is wielded by a corps of experts whom the elective laymen entrust with large freedom.

German Empire.—The German municipal system differs considerably in the different states which make up the imperial federation; but it is practically uniform throughout Prussia, which is larger and more important than all the other states put together. In Prussia the present system of city government rests upon the city government act of 1853; but this code has been amended considerably during the past half century. It applies to all urban communities—about twelve hundred in number —which were recognized as cities (*Städte*) in 1853, or which have been given this status.

The government of a German city consists of a *Bürgermeister* (or in some cases two such officials), a number of administrative magistrates (*Stadträte* or *Schöffen*), and a body of councilmen (*Stadtverordneten*). The councillors vary in number with the size of the city. Berlin has 144, Dresden 78, Leipsic 72, Munich 60, Hanover 24, while the smallest cities have 12 each. These are elected for a six-year term and one-third retire biennially. There are no official nominations, and the voting is not secret. No written or printed ballot is used. A clear majority is necessary to an election at the first polling; if no candidate receives a majority, a supplementary election is held to decide between the two candidates who ranked highest at the first polling.

In Prussia the voters are grouped into three classes on a basis of their annual tax payments. The basis of grouping was formerly very simple but the legislation of recent years has so complicated it that only a long explanaton would make it clear. (For a detailed explanation see W. B. Munro, *Government of European Cities* [1909], 128–135.) Each of the three classes of voters elects an equal number of councilmen, but half the councillors must be owners of real estate in the city. The three-class system does not exist in the German states other than Prussia.

The councillors choose, usually for a six or a twelve-year term, a number of administrative magistrates who may come from the ranks of the council or from outside. The number varies from six in the smaller cities to twenty-nine in Breslau, and thirty-four in Berlin. In the larger cities some of these officials are paid and give all their time to the city's service. The paid officials are put in charge of the city departments. Collectively these administrative magistrates, paid and unpaid, form the *Magistrat* or the upper house of the city government.

The *Bürgermeister* is chosen, for a twelve-year term or for life, by the councillors, subject to confirmation by the Crown. This confirmation is rarely refused. He is invariably an experienced expert in city administration; is well paid; and enjoys great security of tenure.

The council and the *Magistrat* exercise most municipal powers in concurrence, disagreements between them being referred for decision to the higher state authorities. Most matters originate in the *Magistrat*, are sent to the council for approval, and are then returned to the *Magistrat* for execution. The immediate conduct of all city departments is in the hands of joint-committees (*Deputationen*) of the two bodies. To these joint-committees some regular officials and some laymen are added. The general administration of city affairs, however, is in all parts of the German Empire strictly supervised by the state authorities.

Italy.—The Italian system of municipal government is based upon a municipal code of 1889. The organ of city government is a council which consists of from fifteen to eighty members elected by popular vote for a five-year term, one-fifth retiring annually. The suffrage is restricted by an educational test and a small taxpaying qualification. The council meets regularly twice a year; and the actual administrative work is entrusted to a standing committee or *Junta* which it selects from its own membership. It also chooses for a three-year term, from its own ranks, a *Syndic* or mayor who is the chief officer of the *Junta* and the executive head of the city. There is close supervision by the provincial authorities.

Austria.—Austrian cities have an elective council chosen under a system of popular election by which the voters are grouped into four classes. The council selects a number of administrative magistrates, as in the German cities, but the choice is made from the council's own ranks. A burgomaster is chosen, likewise by the council from its own membership, for six years, subject to royal confirmation.

See Local Government in England; Mayor in European Cities; Municipal Government in the United States, Organization of.

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MUNICIPAL GOVERNMENT IN THE UNITED STATES, HISTORICAL DEVELOPMENT OF

Colonial Charters.—The type of city government which prevailed in colonial times was very much the same as that which existed in England at the time. The form of organization provided in these colonial charters followed somewhat closely that of the royal charters to English boroughs. The common council, generally consisting of the mayor, recorder, aldermen, and assistants (councilmen), exercised the principal powers of the city. In addition to the functions performed as members of the common council, which body had control over all administrative matters, the mayor and aldermen had certain judicial duties.

The earlier theory seems to have been that the municipal corporations were not subordinate to the legislative assemblies of the colonies, for the charters granted by the governors were, like those granted by the Crown to the English boroughs, regarded in the nature of a contract between the executive authority and the community incorporated. Regarded in this light, the charter was believed to be incapable of amendment except by agreement on the part of both parties to the contract.

During the colonial period (prior to 1775) only twenty municipal charters were granted, five of these being in New Jersey, while nine were granted from 1775 to 1788. No charter was granted, however, after 1746 until the close of the Revolution. Of the twenty colonial charters, only three (Philadelphia, Annapolis, and Norfolk) resembled the English system prevailing at the time by making the governing bodies close corporations. In these three cities the aldermen and councilmen held their positions for life, the vacancies among the aldermen being filled by the common council and those among the councilmen by the mayor, recorder, and aldermen. In the other seventeen cities, however, the councilmen and generally the aldermen were elected by those having the franchise; and the mayors were appointed by the governor or elected by the council.

Colonial Authority.—The taxing power was lacking in the colonial charters, however, and to secure this power resort had to be had to the legislature, though it was not recognized that the legislative assembly could pass an act contrary to the charter provisions. There can be seen, however, during this period, the development of certain characteristics which differentiated the municipalities in the colonies from those of England, and the way was paved, by special grants of power by the assemblies, for the future domination of cities by the state legislatures. The colonial municipal corporations, on account of the narrow powers conferred on them, did very little along certain lines now regarded as most important. For example, little, if any, provision was made for schools, charities, water supply, and similar functions.

Revolutionary Type of Legislative Charters.—With the close of the Revolution and the formation of independent state governments came several changes in municipal government. The greatest change which followed the Revolution was the change in the charter granting power. Instead of being granted by the state executives, charters were thereafter granted by the state legislatures. This difference in the method of incorporation was destined to have an important influence in the development of municipal government in the United States. For, unlike the contractual relation which was supposed to exist in the charters granted by the governors, those granted by the legislature were regarded not as a contract, but as an ordinary act of legislation which was susceptible of amendment whenever the legislature saw fit.

Immediately after the Revolution a number of cities secured charters from the legislatures of their respective states, but the organization and powers provided for in these legislative charters followed very closely those of the existing municipalities. There were no important developments in municipal organization or functions in the early charters granted after the Revolution.

The last years of the eighteenth century, however, mark the introduction of some very important developments in the organization of municipal governments. The charter of Baltimore, in 1797, and an amendment to the charter of Philadelphia, in 1796, copied the state and national governments by the introduction of the bicameral council. The federal system was still further imitated by giving the mayor the veto power. He was not given the power of appointment, since he was restricted to two candidates nominated by the council for each office. The Baltimore charter also imitated the national government by having the mayor and one branch of the city council elected by a miniature electoral college.

Changes down to 1820.—During the first two decades of the nineteenth century there were no further changes of importance in municipal organization, though the new features of the Baltimore and Philadelphia charters were adopted in some of the charters granted during this period, notably in Detroit and Pittsburgh. Up to this time, the operations of the city government had undergone no changes. Municipal elections, however, became involved in national and state elections during this period, though the mayors were not as yet elected by the people.

Summary, 1780–1820.—The municipal development from 1780 to 1820 may be summarized as follows: the substitution of locally elected councils for the close corporations; the supremacy of the legislature over the cities by exercising the charter granting power; the introduction of the bicameral council, veto power of the mayor, and other features of the federal government; and the subordination of municipal affairs to the issues of national and state politics.

Elective Mayors.—The period from 1820 to 1860 brought other changes, one of the most important being the election of the mayor by the people. Although the first charters which provided for the popular election of the mayor (Boston, St. Louis, and Detroit) did not confer any greater powers on the mayor than generally belonged to the mayors of other cities, the new method of selection gave the mayor a more distinct and independent place in the city government and prepared the way for the larger powers to come when council government became less popular and more unsatisfactory.

New Relation to State Government.—The nineteenth century also witnessed great changes in the position occupied by the city in the state government; the judicial powers formerly exercised by city officials were largely taken over by the state. The city government was made the agent of the state government for purposes of general state administration; for example, for the assessment and collection of taxes. The functions of the city government as a local organization were greatly increased. There was a very marked departure from the colonial practice in which the cities were to a great extent free from central control. The legislatures, becoming accustomed to interfere in matters which were of interest to the state government, extended this interference to matters which were of principal, if not exclusive, interest to the municipalities themselves. Legislative interference became so great, however, that provisions were inserted in a number of state constitutions prohibiting special legislation in regard to cities.

Board System.—Prior to 1850, municipal administration was generally under the control of the council, which determined the policy of the city and elected the executive officers whose actions were controlled through council committees. About 1850 a very important change was made in the system of city government which resulted in the ushering in of a new period in the development of municipal organization in the United States. This system has been called the board system. It decreased the powers of the council by giving much of the municipal administration to independent boards. By 1860, the most important departments of municipal government in the larger cities were in the hands of boards—largely, if not altogether, independent of the council. The members of these boards were in some instances appointed by the central state government; in some, by the mayor; and in some, elected by the people of the city. At the time of its height, the board was not only independent of the council, but also practically independent of the mayor even when appointed by him; for, as a general rule, the members could not be removed except for cause. Provision was frequently made in the statute or charter for what are known as the non-partisan and bi-partisan (*see*) boards.

New Municipal Functions.—During the second quarter of the century the cities assumed new functions. In 1845 New York City organized the first disciplined police force for any American city and a paid fire brigade. Other cities followed the example of New York, and about this time cities began to construct municipal water works, sewer and park systems.

State Board System.—The period from 1850 to 1870 marks a distinct period in American municipal history. In addition to the changes already noted, the state, in many cases, assumed control of a number of administrative departments of the city government. For example, state boards for the control of the police department became quite prevalent, and, in a number of cases, the liquor licensing, health and other departments were placed under state commissions. The reason usually given for this transfer of matters of local administration to state commissions was mismanagement and maladministration on the part of local authorities. The spoils system has been given as the real explanation for state commissions and for much of the detailed legislation for cities, though no doubt maladministration did have something to do with it. In support of the view that the spoils system did have something to do with the real explanation, it is pointed out that the large cities were strategic points, the possession of which was of great importance to the national parties. This situation was responsible for the complete subordination of local to national questions in municipal elections; this being made more effective in some states by changing the time of local elections (which had commonly been in the spring) to that of the national elections.

Summary, 1850–1870.—To summarize, the period from 1850 to 1870 is marked by the rapid extension of municipal functions, the growth of special legislation, the steady decline of the council, the disintegration of city government into independent departments often under state commissions, and with no unity or harmony of purpose or action, and the growing influence of the spoils system.

Commissioner System.—Prior to 1870, the problems of municipal government seem to have been met in a haphazard way, with little comprehension of the great importance of the conditions and problems produced by the large aggregations of urban people. Since 1870 more serious consideration has been given to these problems, and, as a result, many beneficial improvements have been introduced in the municipal system. About this time (1870–1880) there was a movement to abolish what is known as the board system and particularly the state appointed boards, for the system had not proved satisfactory. It was some time before the change became general and even today in some cities there may be found state commissions. In a few cities, city appointed boards may be found at the head of some of the municipal departments, but the general rule is to have single heads or commissioners for the several departments thus making it possible to locate responsibility.

Home Rule System.—The movement against legislative control over municipalities gained much headway during the period 1870–1900 by the adoption of several constitutional prohibitions against special legislation. But these provisions have been evaded in many states by the classification of cities (*see*), laws being passed for a class of cities containing only a single city. In a few states (Illinois, Indiana

and Ohio) general municipal codes have been enacted. Of greater importance, however, was the introduction of the principle that cities should frame their own charters or what is commonly known as "home rule" for cities. The Missouri constitution of 1875 was the first to grant this authority, and though there has not been a general acceptance of this principle on the part of the states, there are at the present time (1913) nine states (California, Colorado, Michigan, Minnesota, Missouri, New York, Ohio, Oklahoma, Oregon, Washington) granting this power to cities. Five of these constitutional provisions (Oklahoma, Colorado, Oregon, Ohio, Michigan) have been adopted in the last decade, or more than were adopted in all the previous history of the country.

Responsible Mayor System.—The government of a number of cities was reorganized about 1875, one of the features being the conferring of the power of appointment on the mayor, subject to the consent of the council. In a number of places the mayor was given the power of removal on definite charges. The new charter also gave the mayor the veto power, subject to a 2/3 or 3/4 vote of the council. There was also a tendency to go back to a single chambered council. By all these changes the power of the council was becoming of less and less importance, Chicago being almost the only exception among the larger cities.

Merit System.—An innovation in municipal government which should be emphasized was the introduction of the merit system. Even prior to this, the New York charter of 1873 made a great advance by prohibiting the removal of members of the police and fire departments except for cause, thereby restricting to some extent the operations of the spoils system. Many cities now have the merit system of appointment for subordinate offices.

Summary, 1880–1910.—The period subsequent to 1880 is marked by charter changes in the western states giving the mayor the absolute power of appointment of the heads of many departments without the consent of the council, and the power of removal without charges for a certain period after appointment. Since 1895, in a number of cities the mayor has the power of removal without charges during his entire term. The changes made about 1880 and subsequently may be said to have created what is known as mayor as contrasted with council government.

Recent Increase in Municipal Functions.—Urban population has increased very rapidly during the last thirty years, but municipal functions have developed even more rapidly. Not only have police corps, fire brigades, water supplies, street paving, sewer systems, garbage disposal, etc., come to be provided for, but new standards of efficiency have arisen which have required a development greater than can be accounted for by the growth of population. New fields have been added to municipal activities, such as tax supported high schools, libraries, parks, art museums, playgrounds, public concerts, etc. Many cities now operate municipal electric light works and a few have gas works, docks and piers, and conduits for wires, subways, etc. The last ten years have witnessed a very remarkable development along charitable, social, and sanitary lines, such as providing for playgrounds, recreation, housing, tuberculosis sanitariums, etc.

Commission Plan.—The last decade has probably seen more remarkable changes in the organization of municipal government than any similar decade in the history of the country. This has been due to the inauguration of what has become known as "commission government"—not commissions appointed by the governor or mayor, nor commissioners at the head of the several departments, but commissions elected by the people of the entire city. This body exercises all the legislative and administrative powers of the city. This system was inaugurated in Galveston, in 1901, as a result of the catastrophe which overwhelmed the city. The system seemed to give such satisfaction that other cities of Texas copied it. In 1907, Des Moines adopted a plan of government similar to that of Galveston, but there were added other features which have proved very popular; namely, the initiative, the referendum, and the recall. These latter provisions had found their way into the charters of two or three cities prior to this time, but the idea had made little progress until linked with the commission plan. There are different types of the commission plan, but all adopt the same principle of concentration of power and location of responsibility, and this feature is finding its way into the charters of cities which have not adopted the commission plan. There are, at present, (1913) about 250 towns and cities under the commission plan, mainly west of the Alleghenies. Of these, 11 had a population of over 100,000 in 1910; 49, a population of from 25,000 to 100,000; and 59, a population of from 10,000 to 25,000. New Orleans is the largest city now under commission government, with Jersey City, St. Paul, and Denver next in order of population.

Variety of Types.—It cannot be said that there is any type of municipal organization peculiar to the United States; for there are so many forms of organization that it is impossible to say that there is any American type. This is due largely to the fact that there are forty-eight state legislatures legislating on the subject. Most of the charters show the influences of the different periods of development; thus in a few cities the bicameral council prevails, and in a few others the council still has great power. We find again that in some cities certain boards are still appointed by the governor, and not by the mayor, while in a few cities some boards are elected.

Lack of European Influence.—With the exception of the colonial period, city government in the United States has largely been a native growth, being little influenced by continental experience or by English municipal government of the 19th century. We have never had city-states and almost without exception our cities form part of the county governments and other local subdivisions.

Recent Tendencies.—There is a decided tendency toward the single chambered council; Boston and Pittsburgh have abolished the bicameral council quite recently, and proposed charters for Baltimore and St. Louis contained provisions for unicameral councils. There is also to be noted a tendency towards state administrative supervision over certain subjects, such as uniform accounting (Ohio, Massachusetts, Indiana, Iowa, Oklahoma, etc.), state tax commissions (Wisconsin, Kansas, Minnesota, etc.), state police (Pennsylvania, Texas, etc.), and state boards of health. The recent tendencies may be summarized as follows: the extension of home rule; the concentration of power and the location of responsibility; the extension of the merit system of appointment for subordinate positions; smaller legislative bodies and the substitution of a unicameral for the bicameral council, with either the abolition of ward lines, or the widening of election districts; non-partisan nominations; a short ballot; and commission government.

See ALDERMAN; BOARDS, MUNICIPAL; BOARDS, MUNICIPAL, BIPARTISAN; CHARTERS, MUNICIPAL; CITIES, CLASSIFICATION OF; CITY AND THE STATE; CITY PLANNING; COMMISSION SYSTEM OF CITY GOVERNMENT; LOCAL GOVERNMENT IN ENGLAND; LOCAL SELF-GOVERNMENT; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES; MAYOR AND EXECUTIVE POWER IN AMERICAN CITIES; MUNICIPAL GOVERNMENT, FUNCTIONS OF; MUNICIPAL GOVERNMENT IN THE UNITED STATES, ORGANIZATION OF; POLICE IN AMERICAN CITIES.

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MUNICIPAL GOVERNMENT IN THE UNITED STATES, ORGANIZATION OF

Relation of City and State.—Generally speaking, a municipal corporation possesses and can exercise the following powers and no other: (1) those expressly granted by the charter or statute of incorporation; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved, as a rule, against the corporation, and the power is denied. Except as hereinafter pointed out the charter is the statute under which a municipal corporation is created, is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability not authorized thereby, or by some legislative act applicable thereto. All acts outside of the powers granted are void.

This is the old, dry, legal doctrine that the city is in complete dependence upon the will of the state legislature, which may extend or contract the boundaries, functions and powers of a city at will, except as expressly forbidden by the provisions of the state constitution. To the extent to which this doctrine has prevailed, the form and character of the government of American cities has been the subject for state determination. Within the past twenty years, however, there has been a strong tendency to modify this doctrine; on the one hand through giving cities under constitutional provisions the right to frame their own charters or home rule; secondly, through assigning to the city ampler and more general powers by statute.

Home Rule for Cities.—This is based on the idea of the city's independence from the intermeddling of the state legislature. Cities must be given sufficient power to govern themselves. In place of a long enumeration of specific powers, they should be given general powers to meet their needs. The method substitutes a positive, affirmative grant of power for the negative policy of petty limitation. It recognizes that in state matters there should be centralization and uniformity; in municipal affairs, local autonomy and home rule. This movement has been advanced, through constitutional provisions, and legislative enactments. The dependence of the city upon the state legislature is being lessened, through legislation and constitutional amendments granting increased power to municipalities over local affairs, and granting cities power to draft and submit to a vote of their electors their own charters; in some states (as in Colorado), without further reference to the state legislature or other body, and in others (as in California) subject to the approval but without amendment of the state legislature. The states having home rule provisions in their constitutions are: Missouri (1875), Washington (1889), Minnesota (1898), California and Colorado (1902), Oregon (1906), Oklahoma (1907), Michigan (1908), Arizona (1910), Ohio, Texas, and Nebraska (1912). Such constitutional provisions establish home rule more firmly because they definitely place the local government beyond the power of the legislature; otherwise the hand that gives may also take away.

Powers of the Municipality.—There is a growing disposition however, in those states not possessing constitutional home rule provisions to grant general rather than specific powers. The municipal program adopted by the National Municipal League in 1900 was based on the idea of giving to the municipality the widest possible discretion in determining the sphere of its activity. The form of constitutional amendment, which it recommended as a part of the program (and which is the basis of the home rule provision of the Colorado constitution), assured to the city a large measure of freedom in the determination of local policies. In giving to the municipality all powers not inconsistent with the general laws of the state, the idea was to create the presumption in favor of the broadest exercise of municipal powers, because experience had clearly demonstrated that constant appeals to the state legislature for additional powers had been one of the most unfortunate influences in American public life.

Legislative and Administrative Control.—The tendency of the past twenty years has been to diminish the legislative control over city government. On the other hand, there has been an equally strong tendency to substitute administrative control, as part of the general movement toward centralization. This tendency has not yet reached proportions at all comparable to those it has attained in Europe. This state administrative control is manifested in many ways. Municipal officers may be removed by central administrative authorities under certain circumstances (Michigan, New York, Ohio). The state civil service commission may have either complete authority, as in Massachusetts, or strong control, as in New York. Police boards are appointed directly by the state, as in Baltimore, Boston, St. Louis. Local health boards may be appointed by state authorities or strongly controlled by a state board. It is in finance and public utilities that the tendency is manifesting itself most strongly. A number of states now provide for the state audit of municipal accounts. Since 1902, the state auditor of Ohio has prescribed and installed the system of accounting and reporting for cities, and he can require a full report from every taxing district and public institution and from every official, state or local. State control over public utilities is now exercised in New York and Wisconsin to a large degree, and in Massachusetts and Pennsylvania by suggestion and public report. In the first two states large powers are conferred upon commissioners appointed by the governor to fix rates to be charged by public service corporations like railways, lighting and water, and to control the capitalization. In those states where this power of state administrative control has been developed, there has been an increase in efficiency and uniformity of the municipal functions so controlled.

Diversified Forms of Government.—England, and the continental countries generally, have uniform systems of government for the cities, the only exceptions to these being the metropolitan centres. There is no such uniformity in America; on the contrary, there are almost as many varieties of form as there are states; although they may be classified in a large way as: responsible mayor government; the council type; government by boards; and the commission form of government. There are many modifications and a great number of hybrid forms. This diversity is due in part to the fact that municipal government is either a matter of state regulation or local determination, as the practice of state legislative interference or home rule prevails. Another potent factor is the gradual breaking down of the old doctrine of the separation of the powers of government into executive, legislative and judicial. This complexity and diversity of form is also partly due to the tendency to make and unmake charters, while, comparatively speaking, and until recently very little attention has been bestowed on their administration.

In European city government, as in European national government, the doctrine of the separation of governmental functions has never

grown up, and the resulting form represents an effective combination of legislative and the executive, producing results that have aroused the admiration of American students.

Development of Forms.—In the earliest American city charters which were generally granted by the colonial governors, the old English borough plan was followed. After the Revolution there came a change in the manner and power of granting of charters, the state legislatures taking the place of the colonial governors. The tendency was to substitute the legislative for the executive; but there was not much change in form until the early part of the nineteenth century. Then came popularly elected mayors and councils with large powers, exercised, in a gradually increasing degree, by two chambers. The property qualification for municipal suffrage gradually disappeared, except in form, during this period. During the middle period (1845–1880) cities grew in number and size. The main points in municipal development were: (1) extension of functions in kind and degree; (2) growth of special and partisan legislation and the beginning of measures to check this tendency; (3) steady decline of the council in power and influence; (4) a marked tendency to disintegrate into independent departments, with no unity or harmony of purpose or action; (5) development of the mayor's authority and influence through the powers of appointment and removal and the veto power. The last two decades were marked by a gradual improvement of the administrative service, through introduction of the merit system of appointments, and the growth of the movement against the system of partisan and legislative government of cities. The principal change in the form of organization was in the still greater strengthening of the mayor's power and position and the consequent dwindling of the council; then a substitution of a single head for a board or commission, and, eventually, the placing of this single head under the control of the mayor. Hand in hand was the recognition that it was possible to distinguish in all forms two ultimate or primary functions—the determination of the public policy and its execution. One is legislation; the other, administration.

Gradually the influence of the mayor in legislation grew stronger, and thus brought about a realignment of power and responsibility, a tendency which has been greatly strengthened by the remarkable growth of the movement for the commission (*see*) form of government, the influence of which is changing both the outline and theories of city government. Already close observers have discerned the next step in this development in the suggestions which have been made to the effect that the commission be elected but without the administrative powers, these to be exercised by managers selected by the commissioners.

Mayor.—Notwithstanding the several tendencies noted, the strong mayor type of city government is the dominant one at the present day in the North and West, although the powers of the mayor (*see*) and his relation to the council and other departments are by no means uniform. In the leading cities the mayor still dominates. He has large powers of initiative, appointment and veto. In many cities, in addition to his administrative functions and his control over legislation (through the veto), he exercises the functions of a committing magistrate, a relic of the days when our governments were modeled on the English municipal corporation.

The mayor will continue to be a dominating factor in American municipal government whether elected at large, as at present in the great majority of cities, or by the council (under the name of general manager); the development of new fields of governmental activity requires large technical skill and knowledge and a concentration of power in the hands of a responsible, capable official. Moreover, the demand for efficiency in municipal administration will less and less brook the delays incident to an elaborate system of checks and balances in city government (*see*), the relics of the days of strict adhesion to Montesquieu's theory of the separation of powers (*see*).

Council.—In the council form of government, the mayor is of less importance than the council. In England he is a member of the council and elected by it. In general the only control which the council retains over the personnel of the administration is the right to approve or reject the mayor's appointments; even this power is lacking in some of the more recent charters and the council is confined almost exclusively to legislative functions. The power of the council to require reports of the executive officers is quite general; so is its power of investigation. Taking the United States as a whole, about one-third of the cities having over 25,000 population have the bicameral system. Councils vary in size from 5 to 127.

Nevertheless, the result of the frequent and ruthless resort to the pruning knife in connection with the powers of the council has not destroyed legislative government. It has simply helped to make local policy a matter of state legislative determination. In other words, the body which determines municipal politics is no longer, in such cases, a local council with a proper sense of responsibility to the people of the city, but a central council elected by the people of the state as a whole. Such a policy is, of necessity, one that undermines the instinct and practice of self-government, creating a feeling of dependency and helplessness.

See BOARDS, MUNICIPAL; CHARTERS, MUNICIPAL; CITY AND THE STATE; LEGISLATION

AND LEGISLATIVE PROBLEMS IN CITIES; MAYOR; and under MUNICIPAL GOVERNMENT.

References: J. F. Dillon, *Commentaries on the Law of Municipal Corporations* (3d ed., 1881); F. J. Goodnow, *Municipal Government* (1909); F. Parsons, *City for the People* (1900); E. P. Oberholtzer, *Referendum in America* (1912); A. R. Hatton, *Digest of City Charters together with other Statutory and Constitutional Provisions Relating to Cities* (1906). CLINTON ROGERS WOODRUFF.

MUNICIPAL HOUSING. Municipal housing is unknown in America, and there is little demand for it. Housing reform is found rather in state regulation through the exercise of the police power (*see*) in tenement house laws and building codes. The peculiar social and political conditions make such an extension of municipal functions undesirable. The instability of city administrations with the changing of responsible public officials every few years militates greatly against the successful operation of municipally owned and managed tenements. The difficulties of administration would, in addition, be much complicated by reason of the cosmopolitan and alien character of the population of our large cities.

All that could be expected to result from municipal housing has been or is being accomplished by other means.

See BUILDING LAWS; HEALTH, PUBLIC, REGULATION OF; HOTELS AND LODGING HOUSES, REGULATION OF; LODGING HOUSES, PUBLIC; MODEL DWELLINGS. **Reference:** Lawrence Veiller, *Housing Reform* (1910), ch. viii.

LAWRENCE VEILLER.

MUNICIPAL LODGING HOUSES. A municipal lodging house is an institution maintained by the municipal authorities, generally in connection with the department of public charities, for the reception and care at night of men and women who have no shelter. See HOTELS AND LODGING HOUSES, REGULATION OF; LODGING HOUSES, PUBLIC; POLICE STATIONS.

L. V.

MUNICIPAL OWNERSHIP. Definition.—In common parlance the phrase "municipal ownership" is currently used to include not only the ownership of an undertaking by a municipality but its operation as well. Strictly speaking, ownership does not necessarily involve operation. It is quite common for European cities to own theatres, for example, but there are few instances where the municipality actually produces operas, plays or concerts, this function being turned over to private enterprise. Other like instances are public markets, abattoirs, cemeteries, docks, wharves and quays. Municipal ownership of land is also very common in German and Austrian cities, there being instances where the municipalities own a third to a half of their entire area. In other countries municipal ownership of land is quite common, but the amount outside of parks, playgrounds, open spaces and streets is generally small as compared with the total area of the cities. The schemes for improved housing in Glasgow, Birmingham, London, Berlin and Paris are well known. In some instances tenements have been erected on city land and are operated by public authorities.

In the realm of public utilities, it is seldom that a municipality owns a system but does not operate it. The most important gas works owned and leased are those of Philadelphia, which have passed through a varied experience. The plant was originally in the hands of a private company. From 1841 to 1897 it was owned and operated by a public body. In that year the works were leased for thirty years to a private company.

Several cities have leased street railways to private companies, particularly in Great Britain and Germany. In Great Britain the law did not at first permit cities to operate street railways, but several cities early took the stand that, in order to have proper control of their streets, they should own the street railways, but they were forced to lease them to private companies. The service in Glasgow and Huddersfield was so unsatisfactory under this system that Parliament was besought to make exceptions to the general rule, which it did in these two instances. The success of Glasgow with its tramways so aroused other cities that the general prohibition was modified and city after city not only took over its street railways, either by purchase or at the end of the franchise, but began actual operation. At the present time there are only a few instances in Great Britain where the cities own tramways but do not operate them.

In Germany the experience was similar. In the early years it was not considered wise for cities to assume the responsibilities of direct management, and the tracks were sometimes constructed by municipalities and sometimes by private companies; but in practically every instance the responsibility for actual operation was turned over to a company under a limited-term lease. As these leases lapsed or approached the date of expiration, the service was so poor in many cities that they took over the lines. At present municipal ownership of street railways without operation is not common in Germany.

Outside of Germany and Great Britain city ownership and lease is rarely encountered. Exceptional instances are the street railways of Milan, Melbourne, Toronto and Liege. A few cities own stock in private companies, such as the New Orleans water works and Louisville water and gas works (recently sold). The ownership of stock does not constitute ownership of the plant, and the scheme has not been generally satisfactory from the point of view of the public or of the taxpayer.

Although municipal ownership combined with private operation is well suited to certain activities where there are a number of lessees, its advantages as a general solution, particularly where an entire industry is to be rented to one lessee, are quite limited. As an intermediate step between private operation and municipal operation, it has certain features that commend themselves, but as an ultimate solution experience does not indicate that it is satisfactory. It worked more advantageously with the old horse car system where the plant was simple and largely limited to tracks in the street; but the present street railway is a complex organization. The track is expensive and complicated. The elaborate power house has taken the place of the simple car barn, and in a large city the problems connected with the construction, maintenance and replacement of the property are so intimately tied up with the problems of operation, that it is difficult to separate the one from the other. The policy of municipal ownership and lease is better adapted to an industry where the plant is comparatively simple and of a stable character. Where questions are constantly arising as to the improvement and reconstruction of the plant, due perhaps to changes in the arts, the opportunities for disagreement between the owner and the lessee are so many that it is difficult to draw a contract which will protect the public, and yet give to the company a fair return upon its investment.

Generally speaking, municipal ownership without operation is more successful from the financial than from the service standpoint. The reasons are apparent. The city may determine the rental, but the lessee proceeds to fix a price for service and to determine the character of service in such a way that he may collect from the public not only operating expenses and rental but his profit besides. Naturally, if he cannot secure the profit he thinks he should have and yet give the public good service at reasonable rates, he will either curtail the service or charge more than a reasonable rate.

The obvious solution is that the contract should be so drawn that the same public authority shall determine the character of the service and the rate of charge, but it is apparent that if this power were given to a public body, the power might be so exercised that the lessee would not receive a fair return, and naturally he is not inclined to enter into an agreement where he may be caught between the two millstones. The obvious conclusion is that where good service is more important than financial return, public ownership and lease to private operator is not ordinarily successful.

See CHARTERS, MUNICIPAL; CITY AND THE STATE; FERRIES; FRANCHISES, CORPORATION, LEGAL ASPECTS OF; MUNICIPAL GOVERNMENT, FUNCTIONS OF; MUNICIPAL GOVERNMENT IN CONTINENTAL EUROPE; MUNICIPAL TRADING; PUBLIC SERVICE COMMISSIONS; RAILROADS, PUBLIC OWNERSHIP OF; TRANSIT IN CITIES, PROBLEMS OF.

References: M. R. Maltbie, "Municipal Functions" in *Municipal Affairs*, Dec., 1898; J. A. Fairlie, *Municipal Administration* (1906); E. W. Bemis, *Municipal Monopolies* (1899); L. S. Rowe, "Relation of the City of Philadelphia to the Gas Supply" in *Acad. of Polit. and Soc. Sci.*, CCXXIX (1898); National Civic Federation, *Report on Municipal and Private Operation of Public Utilities* (1907), Pt. II; Effren Magrini, "Milan Street Railway" in *Municipal Affairs*, March, 1902.

MILO R. MALTBIE.

MUNICIPAL REFERENCE BUREAUS. Institutions for the collecting, compiling, collating and making available to all municipal authorities data and information on all phases of municipal administration, in order to aid the city in establishing its business affairs upon a more efficient basis, avoid past mistakes, and benefit by the successful experiments of other cities. Largely through the influence of the National Municipal League such bureaus have been established in a number of large cities including New York City, Baltimore, St. Louis, Milwaukee and Los Angeles, and in several universities. **See** LEGISLATIVE REFERENCE BUREAU; MUNICIPAL RESEARCH, BUREAU OF; STATISTICS, OFFICIAL COLLECTION OF. **References:** National Municipal League, *Proceedings* (1910); *Am. Year Book, 1910*, 246–47.

O. C. H.

MUNICIPAL RESEARCH, BUREAUS OF. The bureau of municipal research is a center of investigation and an agency of publicity with respect to actual administration of city affars. The first institution of this type was that established in New York City in 1906, but since that time similar bureaus have been established in Baltimore (1907), Philadelphia (1909), Chicago (1910), Boston (1910), and many other cities. In some of these cities as in Boston (where the Municipal Research Bureau is under the supervision of the Finance Commission), and in Baltimore, the cost of maintenance is borne by the city treasury; in others the institution is maintained by private subscriptions or by commercial organization and is not regularly attached to any official city department.

The personnel of a municipal research bureau usually consists of a director, several experts in charge of the different branches of work, and a number of investigators, accountants and clerks. The parent bureau in New York City has a staff of about forty-seven: but some of the institutions established in smaller cities have only two or three employees. The work of a bureau, to put it in general terms, is to study such phases of actual city administration as are too technical for the ordinary citizen to

understand. The results of such study are summarized in intelligible, concise statements and are made the basis of such recommendations to the city authorities as may seem appropriate. The entire work of the institution is based on the belief that most of the inefficiency and extravagance which characterizes every day municipal administration is the outcome not of official dishonesty but of slovenly business methods.

The specific task of the research bureau is, accordingly, to suggest improvements in the functioning mechanism of city administration, to gather reliable data for use by heads of city departments, to coöperate with city officials in any serious effort to improve their business methods, and to stimulate the ordinary citizen's interest in municipal affairs by a persistent and somewhat original publicity campaign. This campaign is in part conducted through the daily press but more particularly by the issue of leaflets, bulletins and printed reports.

The success which these bureaus have attained as effective agencies of civic betterment has led to a beginning in their use as institutions for training young men in the science of local government. In 1911 a training school of this nature was established in connection with the New York Bureau of Municipal Research and in the same year a step in the same direction was taken by the establishment of a Bureau for Research in Municipal Government at Harvard University.

See Legislation and Legislative Problems in Cities; Legislative Reference Bureau; Municipal Government, Functions of; Municipal Reference Bureaus. References: New York Bureau of Municipal Research, *Six Years of Municipal Research for New York City* (1912); *Nat. Municipal Rev.*, II (1913), I, 48–56; reports and other publications of the bureaus from time to time.

William Bennett Munro.

MUNICIPAL SOCIALISM. See Socialism, Municipal.

MUNICIPAL TRADING. A term which has become quite common in Great Britain since the appointment of the Parliamentary Joint Committee on Municipal Trading in 1900. The term is synonymous with municipal ownership and municipal operation in the United States and usually includes those undertakings which produce an annual revenue, including, besides the usual utilities, markets, baths, cemeteries, tenements, harbors, canals and crematoria. See Monopolies; Public Utilities; Railroads, Street; Transit in Cities, Problem of; Telephones, Regulation of; and under Municipal. References: L. Darwin, *Municipal Trade* (1903); Select Committee of Ontario Legislative Assembly, *Report on Municipal Trading and Municipal Ownership or Operation of Public Utilities* (1903); National Civic Federation, *Report on Municipal and Private Operation of Public Utilities* (1907).

M. R. M.

MUNICIPAL VETO OF STATE ACTS. For the purpose of securing a measure of home rule for cities, the New York convention of 1894 inserted in the constitution a provision for a municipal veto upon special legislation in regard to cities. Special legislation seemed a practical necessity where cities differed so widely in population, functions and activities. Art. XII, Sec. 2 of the constitution divides the cities of the state into three classes according to population and then defines special city laws as laws relating to a single city or to less than all the cities of a class. All such laws are, upon passage by the legislature, immediately transmitted to the mayors of the cities affected for action within 15 days. If the action is favorable, the bill is sent to the governor for his approval; if unfavorable, it must be repassed by both branches of the legislature before it is sent to the governor for his consideration.

Action by the city is taken by the mayor and the legislative body concurrently after public hearings, except in cities of the first class where it is taken by the mayor alone, the legislature not having provided for the concurrence of the legislative body in these cases.

The effect of this provision has been unquestionably beneficial, but it has not prevented the passage of partisan legislation, as the veto of the city can be overridden by the same vote by which the bill was originally passed. As a "pocket veto" this provision for approval by the city has proved particularly effective and valuable. If the session expires before the 15 days allowed for city action are completed, the veto of the city is absolute.

See Municipal Government in the United States.

References: F. J. Goodnow, *Municipal Government* (1909), 182–3; H. E. Deming, *Government of American Cities* (1909), 234, 251–2; National Municipal League, *Report on Municipal Program* (1898). Elliot H. Goodwin.

MUNICIPAL VOTERS' LEAGUE OF CHICAGO. The history of this organization is an account of a successful movement, on a small scale, for the recovery of representative government. The League was started in 1896. It was an outcome of a meeting of citizens called to consider what could be done to remedy intolerable municipal conditions. The Chicago city council at that time was the sorest spot in the municipal system. It was corrupt and incompetent. Not more than ten of its members—at that time numbering 68—were even suspected of being honest. The rest were organized into a "gang" for plunder and blackmail. The action of the aldermen on franchise

matters was particularly scandalous. Revolutionary changes were not wrought by the League as the result of any single campaign. At first only enough aldermen in sympathy with the purpose of the League were elected to prevent the passage of improper measures over the mayor's veto. After a time, however, a majority of the council were aldermen who had signed the League's platform, which provided, among other things, for the organization of the council on non-partisan lines, instead of by the party caucus method. In 1900, for the first time, the council was organized by the best men in it, on non-partisan lines, and the same plan of organization has been followed since.

The League has a self-perpetuating executive committee of nine. It investigates the records and standing of candidates for the council, but does not make nominations. It aims to influence results by furnishing the voters with reliable information concerning candidates for alderman. In other words, it is primarily a bureau of information and publicity for the field it has chosen to cover. It confines its activity to the city council. In January or February of each year the League issues what it styles a preliminary report, dealing with the work of the council for the preceding year, and giving the detailed records of the outgoing aldermen, approving or condemning, as the facts may warrant. Shortly before the April election, another report is issued, giving the records of the candidates and advising the voters which to elect and which to defeat. It has been the custom, too, especially since the passage of the direct primary law, to issue bulletins prior to the primaries. On occasions, where both the regular party nominees have been objectionable, the League has been indirectly instrumental in promoting independent candidacies. Funds for the support of the work are raised by voluntary contributions.

The Chicago city council has larger powers than are possessed by most American municipal legislative bodies. Instead of depriving the council of power, as so many other American cities have done, the Chicago method has been to reform the council and make it representative of public interests. The aldermen in recent years have taken even a more important part than the mayor in working out solutions of vexed problems. Organizations similar to the Municipal Voters' League of Chicago have been established in several others cities.

See NON-PARTISAN POLITICAL ORGANIZATIONS.

References: E. B. Smith, "Municipal Voters' League in *Atlantic*, LXXXV (1900), 834–839, "Municipal Reform in Chicago" in *Nation*, LXX (1900), 411–412; S. E. Sparling, "Chicago's Voters' League" in *Outlook*, LXXI (1902), 495–98; C. L. Jones, *Readings on Parties and Elections* (1912), 321–326.

GEORGE C. SIKES.

MUNN vs. ILLINOIS. The plaintiff in error in this case was prosecuted and convicted under the statutes of Illinois for transacting the business of public warehouseman without procuring a license, and appealed from such conviction to the Supreme Court of the United States, contending that the result of the statute was to deprive him of his property without due process of law (*see*) and that the statute itself was repugnant to the delegation of power to Congress under the commerce clause of the Federal Constitution ([1876] 94 *U. S.* 113). The court discussed the constitutionality of the statute as a whole, involving the regulation of rates of public warehousemen, and held that those engaged in that business, like common carriers, had devoted their property to a public use (*see* PUBLIC USE) in such sense that it was affected with a public interest and as such was subject to police regulation to an extent which would not be justified in the case of ordinary private property. Such power of regulation was found to have been exercised by the British Parliament prior to the separation of the colonies from Great Britain, and was held therefore to be in accordance with the principles of the common law and committed to and retained by the state legislatures so far as not limited by the Constitution of the United States. Inasmuch, therefore, as legislation of this character is within the scope of legislative power its exercise can not be said to result in the deprivation of property without due process of law. Such regulations are invalid if they deprive the owners of property devoted to a public use of a reasonable compensation for such use (*see* PRICES AND CHARGES, REGULATION OF). The contention that such statutes so far as they affect interstate commerce infringe the powers of Congress under the commerce clause was more fully considered in the Granger cases (*see*). This is the leading case for the general definition of public callings which are subject to special legislative regulation in the public interest.

See POLICE POWER; PUBLIC USE; PRICES AND CHARGES, REGULATION OF. E. McC.

MURPHY, CHARLES FRANCIS. Charles F. Murphy (1858–), Tammany leader, was born at New York City, June 20, 1858. He learned the trade of ship-caulker, and attained fame as an athlete and "gang" leader in the "gas-house district." In 1875 he organized the Sylvian Club, later merged in Tammany Hall. After a tour of the country in 1876, as captain and catcher of a baseball team known as the "Senators," he returned to New York City to become first a street car driver and then a saloon keeper. On the death of Edward Hagan, the Tammany district leader, in 1892, Murphy became his successor. In 1898 he was appointed dock commissioner. In 1902 he succeeded Richard Croker as leader of Tammany Hall. The nomination of George B. McClellan

for mayor, in 1903, was his work, his aim being to ally with Tammany Hall the independent Democrats and others who had supported the administration of Seth Low. In the same year a dispute with Hugh McLaughlin, leader of the King's County Democratic organization, resulted in McLaughlin's retirement. In 1913 the Tammany ticket in New York City was defeated by the Fusion forces, and the organization lost control of the legislature. See Boss and Boss System of Party Organization; New York; Tammany. References: J. K. McGuire, *The Democratic Party of the State of N. Y.* (1905), III; C. H. Parkhurst, *Our Fight with Tammany* (1895). W. MacD.

MUSEUMS, PUBLIC. The Federal Government owns and maintains several museums and collections of objects open to the public. The Smithsonian Institution, founded in 1846, conducts scientific expeditions and maintains public exhibitions. The National Museum in Washington contains a variety of objects, most of them connected with American geology or zoölogy or the native races. The Corcoran Art Gallery, also in Washington, was presented to the government by William H. Corcoran, in 1873. There is a medical museum in the Surgeon-General's office. Many of the models of the Patent Office are arranged in a collection, and the Mint also conducts a public display. No state at present supports a general museum, though several state universities have public collections and educational displays. Several cities maintain public zoölogical gardens, general museums and art galleries presented to the city or conducted by trustees for the benefit of the public. Among these is the Field Colombian museum in Chicago. Los Angeles, among other cities, has established a permanent exhibit of civic betterment. Many public schools have small collections which are put on view. See Art, Public; Education as a Function of Government; Libraries, Public; Public Buildings, Federal, State and Municipal. References: *Am. Year Book, 1911*, 754, *ibid, 1912*, 749, *ibid, 1913*, 766, and year by year; Smithsonian Institution, National Museum, and other collections, *Annual Reports*. A. B. H.

MUSIC, PUBLIC. Military Music.—The Federal Government assumes direct control over military music by statutory provisions for musicians, stating their number, rank, pay, rations and closing allowance in the various branches of the Army and Navy. The first federal statute to make such provision was that of April 30, 1790 (*Stat. at L. I*, 120), of which, an "Act for Regulating the Military Establishment of the United States," Section 5, designating the pay of the troops, provides for the addition of musicians to the establishment of each battalion of infantry and of the battalion of artillery.

In the "Articles of War" (*see*) of April 10, 1806 (*R. S.* 1342), it is expressly stated that the word soldier is used to include musicians.

The Marine Band, stationed at Washington, was created by act of July 25, 1861, for the "better organization of the Marine Corps." Its strength was fixed at a leader and thirty musicians. By an act of March 3, 1899, to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps, a second leader was provided with pay at the rate of $75 per month and the allowances of a sergeant-major, the leader was given the pay and allowance of a first lieutenant, and the pay of the musicians was fixed at $60 per month and the allowances of a sergeant, without, however, increase of pay for length of service.

Church and Civil Music.—The Federal Government is constitutionally prohibited from furnishing any direct support to religious institutions (Amendment I), but the colonial and early state governments usually subsidized their churches and in these appropriations provision was frequently made for church music. Civic, as differentiated from military and religious music, is controlled almost entirely by the municipalities. It embraces the two forms of distinctly educational music taught in the schools, and of public concerts, which are provided for out of the funds of the city governments.

Public School Music.—In most of the public schools throughout the country music is taught. It usually takes the form of sight reading and choral singing, though this is frequently supplemented by lectures on musical subjects. Several of the larger cities provide free concerts and educational lectures in the public schools. The first systematic teaching of music in the schools was undertaken by Boston about 1837, under the direction of Dr. Lowell Mason.

Municipal Music.—There has been a growing tendency, in recent years, for the municipalities in the United States to provide band, orchestral, chamber music and organ concerts. These are usually summer outdoor concerts in the parks and waterfront pavilions. A survey of the conditions of municipal music was conducted during the autumn of 1912, covering the fifty-three cities with a population of 30,000 or over which had reported music appropriations in the Census Report on the *Statistics of Cities* (1908). Out of thirty-five cities which responded to a general inquiry, twenty-six reported annual appropriations for band or orchestral concerts, in amounts ranging from $500 in Elmira, New York, to $100,000 in New York City. Boston is the only city at present (1913) supporting a municipal orchestra. The chairman of the Music Department of Boston in his report dated February, 1913, states that 81 concerts were given during the summer, the attendance exceeding 330,000. During the winter season 47 concerts were given, including or-

chestral, chamber music and organ recitals. The attendance was 45,449. The problem of adjusting the programmes to the tastes of a large and nationally various population has been most carefully studied in New York. A successful effort has been made to suit the programmes, performed by a force of 70 bands and conductors, to the national tastes of the neighborhoods in which these concerts are given. Portland, Maine, has taken the lead in providing city organ concerts by building a large organ in the new City Hall (1912), and maintaining a municipal organist.

See AMUSEMENTS, PUBLIC; ART, PUBLIC; EDUCATION AS A FUNCTION OF GOVERNMENT.

References: E. J. Ward, *Social Center* (1913), 228–233; S. H. J. Simpson, "Municipal Music in New York" in *Survey*, XXX, April 19, 1913; City of Boston, Music Department, *Annual Reports*; *American Year Book, 1912*, 760. S. H. J. SIMPSON.

"MY POLICY." An expression used by President Andrew Johnson with reference to his Reconstruction policy, in 1865–6. **See** RECONSTRUCTION. O. C. H.

N

NAGEL, CHARLES. Charles Nagel (1849–), a native of Texas, was admitted to the bar in Missouri in 1873. In 1881–1883 he was a member of the Missouri legislature, and from 1893 to 1897 he was president of the St. Louis city council. Largely by reason of his eminence at the bar, he was selected by President Taft, in 1909, to occupy the portfolio of Commerce and Labor. As the head of a department whose varied activities tend constantly to be increased he displayed administrative ability of a high order. It was under his general supervision that the thirteenth United States census was taken. See IMMIGRATION.

F. A. O.

NATION. No term in the vocabulary of political science is more loosely employed than the word nation. Whenever it is used, the close reasoner must be on his guard. It may be employed to signify the members of a body politic or state, who are more properly termed a "people" (*see* PEOPLE). On the other hand, it may have small political significance or even none at all. German publicists use the word as an ethnic term; American, French and English publicists are prone to give it and its derivatives a political meaning. The best of our international lawyers speak of a citizen or subject of a state as a "national" of that state.

The origin of the word supports the German usage. Exactly employed, it should indicate a body of people possessing racial, not necessarily political, unity. Racial unity can, however, no longer be identified with community of origin. There is a Swiss nation and an American nation, each made up of individuals of radically different parentage. A nation is a population with a feeling of ethnic solidarity, due to the existence of one or more of a variety of factors of which the following are most important: a common origin; a common language; a common literature, tradition and history; a common religion; common customs or habits of life; common interests of any sort whether due to geographic unity, to similarity of occupation, or to anything else. No one of these factors is indispensable and no one is necessarily decisive in making a nation. The relative strength of every factor has varied in the past and will vary again.

A nation is not the same thing as a state. A state is a community of persons possessing an organized government; in most cases, occupying permanently a definite territory, independent of foreign control. One state, such as Austria, may embrace members of several nations. This failure of state and national lines to coincide is responsible for much political unrest. The ruler seeks to make and keep his people a nation; the agitator often seeks to make his nation a state. A united, homogeneous people—in other words, a state whose population is a nation—enjoys a political strength great in proportion to its numbers. Yet numbers count. On occasion, at least, and, especially against a foreign enemy, they can be made to unite. The modern tendency is toward the inclusion of larger and more heterogeneous populations within states. If domestic tranquility is to prevail, these states must be made nations. The past cannot be changed; the feelings which arise out of the past can be exchanged but little. Statesmen must look to the present and future. They must arouse among their peoples a community of interests in the present and hopes for the future. Only thus may these peoples be welded into nations.

See POLITICAL SCIENCE; STATE, THEORY OF.

References: J. W. Burgess, *Pol. Sci. and Comparative Constitutional Law* (1896), Bk. I, ch. i; J. W. Garner, *Intro. to Pol. Sci.* (1910), 38–56.

HENRY A. YEOMANS.

NATIONAL BANKS AND BANKING ACTS. See BANKS AND BANKING ACTS, NATIONAL.

NATIONAL CURRENCY ASSOCIATION. Under the Aldrich-Vreeland Act of 1908, provision was made for the establishment of national currency associations, which should have the right under certain conditions to issue additional circulation in case of emergency. Such an association may be organized by national banks, not less than ten in number, lying in a single state or in contiguous parts of adjoining states, with an aggregate capital and surplus of $5,000,000. Circulation may be issued by the association upon the deposits of securities of a general character, including commercial paper, to the extent of 75 to 90 per cent of the cash value of the securities, depending upon their character. The total amount of such emergency circulation is limited to $500,000,000; and in order to prevent a permanent inflation, the notes are subject to special rates of taxation, increasing up to 10 per cent, according to the length of time the notes are out. The measure, on account of its many complicated provisions, is not favorably regarded by banks. Nevertheless, a num-

ber of associations have been organized, ready to take action in case an emergency should arise similar to that occasioned by the panic of 1907. See BANKS AND BANKING ACTS, NATIONAL; CLEARING HOUSE LOAN CERTIFICATES; CRISES, ECONOMIC. References: H. White, *Money and Banking* (4th ed., 1911), 443–456, text of act; *Am. Year Book, 1910*, 338–340.

D. R. D.

NATIONAL DEMOCRATIC PARTY. A party composed of "Gold Democrats" (*see*) who nominated John M. Palmer and Simon Bolivar Buckner in the presidential campaign of 1896. The popular vote was 133,542. See DEMOCRATIC PARTY; GOLD DEMOCRATS. Reference: T. H. McKee, *National Conventions and Platforms* (1901), 314–318.

A. C. McL.

NATIONAL GUARD. See MILITIA.

NATIONAL LABOR UNION. See LABOR PARTIES.

NATIONAL PARTY. A name taken by seceders from the Prohibition convention in 1896. The party nominated Charles E. Bentley for President and James H. Southgate for Vice-President. In addition to prohibition it advocated free coinage of silver. It polled 13,723 votes in the election. See PROHIBITION PARTY; SILVER COINAGE CONTROVERSY.

A. C. McL.

NATIONAL PROGRESSIVE PARTY. See PROGRESSIVE PARTY.

NATIONAL REPUBLICAN PARTY. This name applies specially to the presidential campaigns of 1828 and 1832, to denote the Republican elements marshaled, under John Quincy Adams or Henry Clay, against the party of Andrew Jackson, which adopted the name "Democrat" boldly, when coming into power in 1829. Adams, defeated for reëlection as President in 1828, committed all leadership to Clay. Clay himself stood for the presidency against Jackson's reëlection in 1832 and the National Republicans went down to a final defeat. The party name "Republican" then passed out of our politics, until revived in 1853–4 by another generation and upon other issues.

When Jefferson organized a party opposed to the Federalists, during Washington's administration, he chose to style it "Republican" rather than "Democrat," as a name better suited to the times and to avoid identification with Jacobin excesses of the French Revolution to which he wished his followers uncommitted. This party carried the country in 1800 and thenceforward held direction in the Union, besides gaining ascendency in most states, while it lasted. During the era of good feeling which greeted Monroe's accession to the presidency in 1817, that executive, while allaying party strife throughout the Union, was sedulous that the prestige of loyalty should remain with Republicans and that the Federalist party should not be revived. In the presidential canvass of 1824 William H. Crawford (*see*), John Quincy Adams (*see*), John C. Calhoun (*see*), Andrew Jackson (*see*) and Henry Clay (*see*), were competitors for the succession; all were Republicans, and the first three members of Monroe's Cabinet. As among these five the retiring President remained neutral. National candidates for President and Vice-President had latterly been selected by party caucuses (*see* CAUCUS, LEGISLATIVE FOR NOMINATION) in Congress, and Crawford's friends sought and obtained for him the caucus nomination. But the caucus method had fallen into disrepute; many members of both Houses absented themselves; and in vain did the friends of Crawford appeal to fellow-Republicans to preserve the proud party founded by Jefferson. Nominations by state legislature or by some sporadic state convention gave credentials for each other candidate. By such methods were Adams, Jackson and Clay put forward for the presidency, while Calhoun chose his own opportunity in standing simply for Vice-President.

Calhoun won the second office by a large electoral vote, but for President no one carried a majority. Hence it devolved upon the House of Representatives to choose a chief executive from the three highest candidates. Clay had the power to dictate which of his three rivals, Jackson, Adams or Crawford, standing in this order, should win the prize. He presently announced himself in favor of Adams, who, chosen February 9, 1825, following the electoral count, at once invited Clay into his Cabinet. Inauguration followed on the fourth of March and Clay became Secretary of State.

President Adams' administration was an able and honest one, but disastrous in a political sense. National in scope, it sought chiefly a liberal Union expenditure for internal improvements, with the promotion of science and learning. Jackson was put forward promptly as opposition candidate for 1828, while Adams and Clay were in alliance for the former's reëlection. Adams found his hands tied when the Congress which met midway in his term organized with a majority against the administration in both Houses—an unprecedented situation. This new Congress passed a tariff act in 1828, which for the first time plainly asserted protection of home manufactures as a national policy: but this was not in strictness an administration measure, though Adams signed the bill.

For 1828, John Quincy Adams and Andrew Jackson became the opposing presidential candidates, without a national caucus or convention of any kind. Jackson won by an electoral vote of 178 to 83, after a bitter and scurrilous campaign, full of personalities on both sides,

And finally, in 1832, when each party held a national convention, Henry Clay and John Sergeant were the "National Republican" candidates against Andrew Jackson and Martin Van Buren, the Democratic candidates. The Democrats succeeded by an immense majority and the National Republicans never rallied at the polls again.

See DEMOCRATIC-REPUBLICAN PARTY; WHIG PARTY.

References: T. H. McKee, *National Conventions and Platforms* (1901), 18–34; J. Schouler, *Hist. of U. S.* (1887), III, 264–270; 304–451; J. B. McMaster, *Hist. of People of U. S.* (1900), V. 55–81, 227–267, 488–536; A. Johnston, *Hist. of Am. Politics* (1910), 103–128.

J. SCHOULER.

NATIONAL WATERWAYS COMMISSION. Congress created the National Waterways Commission March 3, 1909, "to investigate questions pertaining to water transportation and the improvement of waterways, and to make recommendations to Congress."

The Commission was required to make a preliminary report to Congress in January, 1910. In this report the Commission discusses: (1) the reasons for the decline in inland water transportation and the remedies therefor; (2) the reasons for the decline in inland water ways; (3) the advisability and practicability of barge and ship canals; (4) methods to be followed in adopting projects for improving rivers and harbors, and methods of making appropriations therefor; (5) proper division of expenses between federal, state and local governments; (6) the relation of waterway improvements to irrigation and drainage; (7) the merits of public and private ownership and control of wharves and docks; (8) the relation of waterway improvements to water power; (9) technical methods of river improvements; (10) comparison of European and American waterways and of transportation rates by land and by water.

The Commission was to exist for a period of two years and its final report was to have been submitted to Congress not later than March 3, 1911; but by the River and Harbor Act of Feb. 27, 1911, the life of the Commission was extended until Nov. 4, 1911. It was required to make a final report on or before that date, and, by the act of Feb. 27, 1911, was required to "investigate and report upon the advisability and feasibility of proposed artificial water ways and upon proposed plans for impounding the flood waters in rivers by reservoirs or otherwise."

See INLAND WATERWAYS COMMISSION; LAKES; RIVERS; WATERWAYS, NATURAL, REGULATION OF.

Reference: National Waterways Commission, "Preliminary Report" in *Senate Exec. Docs.*, 61 Cong., 2 Sess., No. 301 (1910).

E. R. JOHNSON.

NATIONALISTS. The Irish Nationalists constitute the most remarkable group in British party history, in that since 1874 they have held aloof from both Conservative and Liberal parties, and consistently bent their energies in Ireland and at Westminster to the one end of Home Rule for Ireland. The Nationalists are of the third movement for the reëstablishment of a Parliament in Dublin since the Union of Ireland with Great Britain in 1801. The two earlier movements were that begun in 1834 for the repeal of the Union, led by Daniel O'Connell, who had a following of forty in the House of Commons, and the Young Ireland Movement of 1842–48. The Nationalist movement began at a conference held in Dublin in November, 1873. Isaac Butt was then the actuating spirit. He was the founder of the party, and led it in the House of Commons from 1874 to 1879. Under his leadership the Irish members organized themselves as a distinct group. At this time—in the Parliament of 1874–80—of the 103 members from Ireland 60 were Nationalists. Butt continued as leader until his death in 1879. He was succeeded by William Shaw whose term of leadership was brief; for in 1875 Charles Stewart Parnell had come into the movement. At the election of 1880—the last on the restricted franchise of the Act of 1867—the number of Home Rule members was increased from 60 to 68.

Parnell succeeded Shaw as chairman of the Home Rule party, and the movement took a wider form. It became economic as well as political through the alliance of the party with the Land League which had been organized in 1879 to agitate for reduced rents and the transfer of the ownership of Irish land to the tenants. Whig and Tory landlords, who had been of the movement under Butt's leadership, broke away when the movement became agrarian as well as political; and after the extension of the franchise by the Reform Act of 1884, it became largely a class movement drawing its support from the peasantry who were more eager for reforms in a vicious land system than for a Parliament in Dublin. The Nationalists under Parnell's lead carried 85 out of the 103 constituencies in Ireland at the general election of 1885—the first on the new franchise; and these successes impelled Gladstone to introduce his Home Rule measure of 1886. Gladstone was then dependent on the votes of the Nationalists in the House of Commons. The Liberals were defeated in the general election that followed the rejection of the Home Rule bill of 1886. The Nationalists, however, were returned in their full strength. There was a second Home Rule bill in 1893 when the Liberals were again sustained in power by the Irish vote. Parnell, who died in 1891, was leader until November, 1890, when he was deposed in consequence of his appearance in the divorce court. He was succeeded by Justin McCarthy, who in January, 1896,

was succeeded by J. E. Redmond. A series of land purchase acts for which both Liberal and Conservative governments were responsible had practically settled the land question by 1910 and with the Parliament Act of 1910 (Lords' Veto) on the statute book, the Nationalists and their sympathizers in England regarded themselves as within the sight of the goal for which they have been contending since 1874. A bill providing for Home Rule passed the House of Commons a third time on May 25, 1914, and became law despite the Lords' veto. The Protestants of Ulster, however, organized a remarkable resistance to the establishment of an Irish Parliament and secured the offer of a limited exemption.

See CONSERVATIVE PARTY; LIBERALS; TORIES.

References: T. P. O'Connor, *The Parnell Movement* (1889); M. Davitt, *The Fall of Feudalism in Ireland* (1904); S. Buxton, *Pol. Questions of the Day* (9th ed., 1892), 1–33; F. H. O'Connell, *Hist. of the Irish Parliamentary Party,* (1910). EDWARD PORRITT.

NATIONALITY. Nationality is the fact of belonging to, or of being a member of, a state. A member of a state is called a national of that state. The tests of state-membership are fixed by each member of the family of nations as a part of its municipal law. As every individual is presumed to belong to some state, nationality has been described as the connecting-link between international law (*see*) and individuals. It is the medium through which they enjoy the benefits of international law.

Nationality is either original or acquired. Original nationality depends upon birth only. The determination of nationality by birth depends upon descent (the child having the nationality of the parents wherever born) or upon the place of birth, without reference to parentage, or upon some combination of the two. The term *jus sanguinis* is applied to the first case, *jus soli,* to the second. Among the states following the first are Austria, Germany, Hungary, Sweden, and Switzerland. The second is the basis of the systems of Portugal and most of the Latin American states. The mixed systems are the product of comparatively recent legislation. The United States and Great Britain have modifications of a former rigid *jus soli,* France and Spain have systems based upon *jus sanguinis.*

Nationality is acquired by naturalization, either by operation of law, or by act of the individual. Collective naturalization by operation of law occurs when a state by conquest, treaty, or otherwise extends its territorial jurisdiction. Individual naturalization by operation of law usually occurs through marriage. Ordinarily the nationality of the wife follows that of the husband, but in some Latin-American states an alien takes the nationality of the wife. Acceptance of public service sometimes works acquisition of nationality, and attainment of domicile in certain cases seems to confer nationality.

Naturalization by voluntary act of the individual depends upon the municipal law of the state. Not infrequently (as in the United States) the minor children of a naturalized national who are dependent upon and reside with him may become nationals as a result of the parent's naturalization.

As nationality may be acquired, so it may also be lost. Loss of nationality may be by operation of law, or by act of the individual. Loss of territory by subjugation or cession works change of nationality of the inhabitants. Some states provide for loss of nationality because of prolonged absence, or as a means of punishment. Nationality may be voluntarily lost, and as the right of naturalization has become established, most states recognize a right of voluntary expatriation as opposed to the older doctrine of indelible, or indefeasible, allegiance.

Double nationality arises because of conflicting legal systems of various states. It may arise because of differences not only in the laws relative to original and acquired nationality but also in those providing for loss of nationality, and with the refusal of one state to admit that naturalization of its nationals by another state automatically breaks the former tie of allegiance. While admitting the principle that acquisition of a new nationality destroys the old, several states decline to admit that loss of nationality extinguishes claims accrued before the new nationality is acquired.

Nationality once lost may be regained or resumed by redintegration, which is a form of naturalization by which an individual may resume a former nationality by certain formal acts without the prolonged period of residence ordinarily requisite for naturalization.

See CITIZENSHIP; EXTRATERRITORIALITY; INTERNATIONAL LAW; NATURALIZATION, LAW OF.

References: L. Oppenheim, *Int. Law* (1905), I, 348–368; H. Bonfils and P. Fauchille, *Manuel de Droit Int. Public* (5th ed., 1908), 240–248; J. B. Moore, *Digest of Int. Law* (1906), III, 270–810; G. Cadorgan, *La Nationalité au point de vue des rapports internationaux* (1879); Alex. Cockburn, *Nationality* (1869); Francis Piggott, *Nationality* (1904); F. von Martitz, *Das Recht der Staatsangehöriger im internationalen Verkehr* (1875); F. Stoerk, "Les Changements de nationalité et le droit des gens" in *Révue de Droit Int. Public,* II, 273–281; "Citizenship of the United States, Expatriation and Protection Abroad," in *House Docs.,* 59 Cong., 2 Sess., No. 326 (1905).

J. S. REEVES.

NATIVE AMERICAN RACE. Strictly speaking the native race in America is the aboriginal; but the term is also frequently applied to the race which was predominant in colonial times and down to the great im-

migration which began about 1830. The census of 1790 shows that about 95 per cent of the white persons in New England at that time had English names, and three per cent more had Scotch names. The Scotch, Irish and Germans in the middle and southern colonies were the only considerable element of non-English white persons, and probably did not form more than 15 per cent of the total population of those colonies. Counting the Puritan Scotch-Irish whose language and religion was like that of their English neighbors, as belonging to the native American race, the other European races probably did not amount to more than six or eight per cent of the whole, not including the negroes.

During the past eighty years this condition has greatly changed. In the southern states, east of Mississippi most of the white people are still of this English or Scotch strain, and there are parts of New England, like Cape Cod and Mt. Desert, in which there are almost no foreigners. Elsewhere the native race has lost ground for various reasons: (1) millions of people have come from Ireland and continental Europe since 1830; (2) intermarriages with foreigners or the children of foreigners have depleted the race; (3) the birth rate of this American stock is diminished.

In 1900 more than half the people in New England were foreign born or children of foreign parents. In the total national population of 67,000,000 whites shown by the census of 1900, about 32,000,000 were immigrants or the descendants of immigrants who came to the country after 1830. The census of 1910 shows that the proportion of the European to the American race is about four to six. The birth rate of the native born element in New England is in the neighborhood of 12 to the thousand, while the birth rate of the foreigners is in the neighborhood of 40 to the thousand. In some of the great colleges the sons of graduates of thirty years standing are fewer than their fathers.

Nevertheless the native stock is widely diffused throughout the United States, and has carried the institutions of the eastern states from commonwealth to commonwealth as far as the Pacific. It may be that the native stock is more active in intellectual and public life than the children of the foreigners; but it is clear that the destinies of America will more and more fall into the hands of descendants of non-English stock. **See** AMERICAN RACE AND AMERICAN NATIONALITY; POPULATION OF THE UNITED STATES. **References:** A. B. Hart, "Is the Puritan Race Dying Out?" in *Munsey's Mag.*, 1911; U. S. Census, *Century of Population Growth* (1909); P. F. Hall, *Immigration* (1906), ch. vi; *Am. Year Book, 1912*, 366–371.

A. B. H.

NATIVISM. A term signifying the anti-foreign principles of the Native American or Know-Nothing party. **See** AMERICAN PARTY; A. P. A. PARTY.

O. C. H.

NATURAL BORN CITIZENS. A natural-born citizen of the United States is one who is a citizen by reason of his place of birth or the citizenship of his father. The two classes of naturalized and natural born citizens are thus mutually exclusive, and together constitute the entire citizen body of the United States. The Fourteenth Amendment (*see*) as construed in the case of United States *vs.* Wong Kim Ark (169 *U. S.* 649) provides that every person born within the territorial limits of the United States, even though his parents be aliens, and of a race the members of which are by law excluded from naturalization, are natural-born citizens. Under certain circumstances persons born outside the territorial limits of the United States are deemed natural-born citizens, as for example, children of American citizens visiting or traveling abroad. The father must, however, at some time have resided in the United States. Only natural-born citizens are eligible to the offices of President and Vice-President. **See** CITIZENSHIP IN THE UNITED STATES; NATURALIZATION, LAW OF. **References:** G. W. Garner, *Intro. to. Pol. Sci.* (1910), ch. xi; F. Van Dyne, *Citizenship of U. S.* (1904).

W. W. W.

NATURAL GAS, REGULATION OF. Regulations aim primarily to prevent wasteful escape of gas into the air. California's law (Mar. 25, 1911, ch. 309) is the most effective. It prohibits "wilfully permitting any natural gas to escape into the atmosphere"; requires all persons controlling a well or land on which it exists, upon abandonment to close the mouth so as to prevent escape of gas; penalizes violations of the law with fine or imprisonment, or both; makes each day of neglected escape a separate offence. Some states prohibit the use of flambau (wasteful) burners. Regulations to prevent damage to gas-bearing strata are identical with those for regulation of oil production. **See** CONSERVATION; MONOPOLIES; OIL PRODUCTION, REGULATION OF. **Reference:** See under OIL PRODUCTION.

E. H. V.

NATURAL RIGHTS. The ambiguity of "natural," "right" and "law" involves uncertainty in the meaning of natural rights and of natural law or law of nature and even leads in some minds to a denial of them. In common English usage a law is a rule enforced by the courts and a right is a thing secured by law. But the terms are also employed with a biological or an ethical meaning and in other ways. Natural, moreover, is applied to various things, from an ideal of moral excellence to indigestion after over-eating. Opinions expressed in terms so loose cannot be reconciled. Some publicists make the law of nature mere self-preservation and natural rights a synonym

for powers. Others regard natural law as the dictate of conscience. If we employ these terms at all, the reason is that there are conceptions of value in our life and thought for which we have been able to supply no better names.

Ethics aided by something unreasoned and illogical within us, teaches that we are in the world for a purpose; namely, the fullest development of our individual powers for good, both material and spiritual. The same teachers give us a conception, more or less sound of the meaning of good and of development. This development can take place only in society and, in every case, is influenced by the conduct of the individual toward his fellows and their conduct toward him. The obligation thus to develop in society, we may say, is imposed by natural law. In brief, the law of nature is that the individual, living among his fellows, shall think and say and do those things which make for such development, and avoid those things which hinder it. The individual may break the law either because he wills to break it or because his conception of good or of development is faulty. One of the commonest faulty conceptions is that there can be any conflict between individuals in the development of their respective powers for good. It is always to one's best interest to concede to one's fellow everything it is to the latter's best interest to have. Natural law never demands the development of one at the expense of another.

The meaning of natural rights follows from that of the law of nature. Every individual has a natural right to do and enjoy those things which make for his highest development. But it must be remembered that his highest development forbids his interference with that of others. Thus the things we commonly term natural rights, such as life, liberty, property, freedom of speech and opinion, are things which it is for the interest of every man that every man should in a high degree enjoy. But these rights are not absolute or unrestricted. A man may be taxed, imprisoned in the contagious ward of a hospital or driven to certain death in a charging regiment. His highest development may require the taking of his property, liberty or even life. If so, natural law is not thereby violated nor natural rights infringed.

See Liberty, Civil; Political Theories, Ancient and Mediaeval; Political Theories of English Publicists; Social Compact Theory.

References: W. W. Willoughby, *Nature of the State* (1896), 91–95, 103–118; D. G. Ritchie, *Natural Rights* (1895), 3–119.

Henry A. Yeomans.

NATURALIZATION. See Citizenship in the United States; Declaration of Intention to be Naturalized.

NATURALIZATION, LAW OF. General Features.—Naturalization is the process by which a state confers its citizenship or nationality upon a foreigner. In most civilized countries it carries with it the status of a natural born citizen, except in the enjoyment of some of the higher political privileges. In the United States it confers all the rights and privileges of citizenship except that of eligibility to the presidency (Const. Art. II. Sec. i, ¶ 5). Generally speaking naturalization is applied for voluntarily, but it may be imposed upon a foreigner without his application when the sovereignty of the territory in which he is domiciled is changed. It is bestowed upon a foreign woman when she marries an American, and upon the minor children when the parents are naturalized. It is collective or individual—collective naturalization being effected by statute or treaty and individual naturalization by general or special law. Instances of collective naturalization are: the enabling acts admitting several of the territories to statehood and declaring that all who have enjoyed the privilege of voting in the territory shall be deemed citizens; the joint resolution annexing Texas (March 1, 1845), which made American citizens of all citizens of the Republic of Texas; the act of April 30, 1900, providing civil government for Hawaii, which conferred American citizenship upon all citizens of the Republic of Hawaii; certain Indians who have adopted civilized life (Act of March 3, 1843, for example). The cases of naturalization by treaty are: the treaty of 1794 (Jay treaty) surrendering the frontier posts; that of 1803 ceding Louisiana; that of 1819 ceding Florida; that of 1848 ceding California and other territory; that of 1853 for the Gadsden purchase; that of 1867 for the Alaska purchase.

Special Act.—Naturalization by special act has occurred when certain Indians have been permitted to secure citizenship by applying to a court (acts of July 15, 1870, March 3, 1873, and May 2, 1890) or even without application (act of February 8, 1887); also when the requirements of preliminary residence or previous declaration of intention have been lessened for certain groups of persons (act of April 14, 1802, and March 22, 1816). An instance of readmission to citizenship under special act was the case of an American born woman, the widow of an Englishman (joint resolution of May 18, 1898).

General Law.—The general law of naturalization in the United States is the same in its main features as that of other civilized states, but it is peculiar in requiring the declaration of intention at least two years before naturalization and investing the power of naturalization in the courts, the former being a requirement unknown elsewhere, and Canada being the only other country in which naturalization is a function of the judiciary.

The Declaration of Independence gave as one of the grievances against George III that he had "endeavored to prevent the population of these states; for that purpose obstructing the laws of naturalization of foreigners," and the Constitution vested in Congress the power "to establish an uniform Rule of Naturalization" (Art. I, Sec. viii, ¶ 4). The first federal naturalization law was passed March 26, 1790. The next, that of January 29, 1795, introduced the requirement of preliminary declaration of intention to become a citizen, and also made the period of preliminary residence five years, the time now required. The next law, that of June 18, 1798, was enacted under the temporary dominance of anti-foreign sentiment and was intended to be an accompaniment of the Alien and Sedition laws (*see*). It required that the declaration of intention be made at least five years before the naturalization and that there be at least fourteen years of preliminary residence. It was repealed by the act of April 14, 1802, which laid down the system which has been followed ever since.

Frauds against the naturalization laws began even before the Constitution was adopted, the actuating motive usually being the desire to vote, and were a continuous scandal. By executive order of March 1, 1905, President Roosevelt directed that a commission be formed of an officer of the Department of State, one from the Department of Justice and one from the Department of Commerce and Labor, to make an investigation and report what ought to be done to reform the system of naturalization. The report of the commission was sent to Congress at the session of 1905, and from it resulted the act establishing the Bureau of Immigration and Naturalization in the Department of Commerce and Labor and providing a uniform rule of naturalization, approved June 29, 1906 (34 Stat. 596).

This law, as amended by the law of 1912, creating a Department of Labor, concentrates authority over naturalization with the federal executive, while the courts retain the power to naturalize. By requiring every applicant to make a petition in duplicate at least 90 days before naturalization, and that one copy be sent to the bureau in Washington, the government has opportunity to examine all naturalization applications and contest the conferring of naturalization in unworthy cases; while naturalization for political purposes is checked by prohibiting all naturalization for at least thirty days before an election. The act confers authority over all naturalization matters upon the commissioner of naturalization under the direction of the Secretary of Labor; provides that all federal courts and state courts of record having jurisdiction in actions at law or equity, without limit to the amount in controversy, may naturalize; that the declaration of intention may be made by one who is at least eighteen years of age, and at least two years before application for naturalization; that the residence before application for naturalization must be at least five years; that at least 90 days before naturalization the petition in duplicate must be presented to the naturalizing court, one copy being sent to the Bureau of Naturalization; that there shall be public notice of applications; that no hearing shall be had within thirty days of an election; that the applicant must speak English and sign his application in his own handwriting; that the hearings must be in open court; that the United States shall be represented; that all naturalizations and refusals to naturalize shall be reported to the Bureau of Naturalization; that there shall be uniform declarations, petitions, and certificates of naturalization, furnished in blank by the Bureau; that an illegally granted certificate of naturalization may be revoked at any time thereafter; that anyone who returns to a foreign country within five years after his naturalization shall be presumed to have obtained naturalization with fraudulent intent and his naturalization shall be set aside unless he overcomes the presumption; and provides heavy penalties for violating the act.

See ALIEN; CITIZENSHIP IN U. S.; INSULAR CASES.

References: F. Van Dyne, *Citizenship of the United States* (1904); A. P. Morse, *A Treatise on Citizenship* (1881); A. J. E. Cockburn, *Nationality* (1869); F. G. Franklin, *Naturalization* (1906); U. S. *vs.* Wong Kim Ark, 169 *U. S.* 674; Boyd *vs.* Nebraska, 143 *U. S.* 135; Message of the President Transmitting a Report and Recommendations from the Secretary of State on the subject of the Naturalization of Aliens in the United States, in *Sen. Doc.*, 58 Cong., 3 Sess., No. 63 (1904); Report to the President of the Commission on Naturalization, submitted November 8, 1905, in *House Exec. Doc*, 59 Cong., 1 Sess., No. 46.

GAILLARD HUNT.

NAVAL ACADEMY AT ANNAPOLIS. This institution, founded in 1845 by order of the Secretary of the Navy, for the education of midshipmen for the United States Navy, counted about 3,800 graduates in 1911. Of those graduated since 1869 about two-fifths are now serving in the Navy, making up nearly the whole of the officers of the line and the naval constructors. For the instruction of 700 midshipmen, appointed on the recommendation of Senators and Representative in Congress from all the states, about 100 officers and 30 civilian instructors are stationed at Annapolis. Up to June 30, 1910, the grounds, buildings, and equipments had cost $21,475,690; and the average cost of maintenance for each of the preceding five years had been $1,250,000. The intenance of the Naval Academy is pro-

vided for as an item in the annual appropriation bill for the support of the naval service; and the salaries of officers and midshipmen are included in the general estimate for the pay of the Navy. See EDUCATION, MILITARY AND NAVAL; OFFICERS, MILITARY AND NAVAL. References: P. Benjamin, *Hist. of the U. S. Naval Acad.* (1900); Naval Acad. Graduates' Assoc., *Register* (1908); W. Pulsifer, *Navy Yearbook*, 1910, 721, and year by year; U. S. Navy Department, *Annual Reports*, 1912, 57, 111–117, 132–135; *Laws Relating to the Navy* (1898), 70–77, 494–498; *Register of the U. S. Naval Acad.*, 1912. C. G. C.

NAVAL HOMES. In 1811 Congress authorized the foundation of an asylum for disabled and decrepid seamen of the Navy, appropriating certain hospital funds for the purpose. The present naval home at Philadelphia was erected in 1832. It is now supported by an annual appropriation of $82,000, drawn from interest on the navy pension fund. Inmates are required to surrender all pensions to the home; but it is proposed to amend the law to place them on the like footing with pensioners admitted to soldiers' homes. The number of inmates on June 30, 1911, was 99. Seamen who have served in the Navy during war are admitted to the national homes for disabled volunteer soldiers and to similar establishments in various states. See MARINE HOSPITALS; PENSIONS; SOLDIERS' HOMES. References: U. S. Navy Department, *Annual Reports*, 1912, 62, 69; *Laws Relating to the Navy* (1898), 55, 98. C. G. C.

NAVAL OFFICER IN CUSTOMS SERVICE. In certain customs districts where a daily accounting with the Treasury Department is impracticable, a treasury official known as a naval officer acts concurrently with the collector in estimation of duties, and thus, through his independent records and vouchers, certifies to the correctness of the collector's account. The title comes down from colonial times. See COLLECTOR OF CUSTOMS; SURVEYOR OF CUSTOMS; TARIFF ADMINISTRATION.

D. R. D.

NAVAL STATIONS. The distinction between navy-yards and naval stations is based upon a comparison of their present equipment rather than their strategic importance. Thus Guantanamo in Cuba and the station to be assigned to the Navy in the Canal Zone of the Isthmus of Panama are of greater prospective value than any of the three navy yards south of Cape Hatteras, though the new stations have not yet been equipped for the supply and repair of the fleet. Two harbors on the continent and four elsewhere are classed as naval stations, including the islands of Guam and Tutuila in the Pacific which are administered by the Navy Department. Six coaling stations are provided; but the use of improved types of colliers and vessels for supplying the fleet with oil should prevent the multiplication of such establishments. A number of naval magazines are distributed along the coast as auxiliaries to the navy yards. See NAVY YARDS; POSTS, MILITARY. References: Navy Department, *Annual Reports, 1910*, 31–33, 175–179, *1911*, 24, 66, 396–398, *1912; Regulations for the Government of the Navy* (1909), ch. xxxvii. C. G. C.

NAVAL VESSELS. Construction.—No vessel can be built without authority from Congress; a limit to the cost is generally voted; and annual appropriations are made according to the progress of the work. Ships may be constructed at a public navy-yard or by contractors at a private establishment. The rule prescribed at the foundation of the American Navy in 1794 made our frigates superior to those of other nations; and the same purpose has been kept in view in recent years, though foreign designs have been adopted in some cases; and delays in construction have sometimes baffled the intention to produce vessels of the latest type. Throughout the sail period our ships and guns were equal to those of any other nation, though few rated ships of the line ever cruised under the American flag. Steam power was adopted at an early date; but the transformation was not complete in 1861; and no ironclads had then been designed. The original *Monitor* was of great use in an emergency, but she and her consorts were hardly seaworthy; nor could their armor resist the fire of the forts at Charleston when engaged within the range of the naval smooth bore guns. Coast-defense ships of this type were built long after the Civil War—four of them since 1898—but they were never adapted to the requirements of a sea-going fleet.

Authority.—The naval advisory board of 1881 reported in favor of steel ships and rifled guns; and cruisers of modern design were authorized by Congress in 1883, when a check upon the practice of keeping obsolete vessels in service by unlimited repairs appeared in the appropriation bills: repairs exceeding 20 per cent of the estimated cost of a new ship may no longer be made without specific authority from Congress. Designs are prepared by the bureaus of the Navy Department after careful study of service requirements and naval progress in foreign countries; and the general board charged with the duty of advising the Secretary as to "the number and types of vessels proper to constitute the fleet" revises the plans with expert assistance. The increase of the Navy since 1900 has not been obstructed by eccentric or impracticable designs; but the appropriations for 1912 and 1913 provided for only one battleship each year instead of the three included in the estimates of the Navy Department.

Battleships.—The first vessels fit to oppose sea-going armored ships of modern type were the *Texas* and the *Maine*, authorized in 1886 and built from English designs. The *Indiana*, authorized in 1890, and commissioned in 1895, indicated the type of the next score of battleships. Repairs costing $2,019,000 (nearly 40 per cent of the original cost of the ship), justify her retention on the list. With three consorts, the *Massachusetts*, *Iowa*, and *Oregon*, she established the superiority of the American fleet during the war with Spain. All the 26 battleships designed between 1890 and 1906 had forward and after turrets, with a pair of 12 or 13-inch guns in each, and an intermediate battery of guns varying in calibre from 5 to 8-inch. The maximum speed was 18 knots, and the belt of armor was 18 inches thick. Displacement increased from 10,000 to 16,000, tons and the cost advanced to $7,911,254 for the *Connecticut*, though the *Illinois* of 11,552 tons had been completed in 1901 for $4,621,408.

The dreadnought design of 1906 armed the *Michigan* and *South Carolina* with 8 12-inch guns in 4 central turrets. The *Delaware* and *North Dakota*, designed in 1907 and commissioned within three years, carry 5 similar turrets with a displacement of 20,000 tons and steam 21 knots; the reciprocating engines of the *Delaware* giving better results in cruising than the turbines of her consort. The *Florida* and *Utah*, commissioned in 1911, have 16 5-inch guns as an anti-torpedo battery in place of the *Delaware's* 14; and the *Arkansas* and *Wyoming*, completed in 1912, have 21 of these guns besides six pairs of 12-inch guns mounted in turrets. They displace 26,000 tons, and, like their predecessors, are propelled by turbines.

For the *Texas* and *New York* ten 14-inch guns are supplied, with triple turrets forward and aft and pairs in two other turrets. The *New York* was built in a navy-yard, and the limit of cost for hull and machinery was $6,400,000. For other battleships, including the *Nevada* and *Oklahoma* authorized in 1911 under the 8-hour rule for labor, the contract price falls within the limit of $6,000,000 imposed by Congress, though the tonnage rises to 27,000. Each of these ships will have nearly 7,000 tons of armor costing $420 per ton; and when armed and equipped the total cost may exceed $10,000,000. For the *Pennsylvania* of 31,500 tons and a similar battleship authorized in 1913, the limit is $7,425,000 each for hull and engines. While gaining 170 per cent in tonnage and more than that in fighting power the cost of a battleship has thus doubled within twenty years, which is the normal life of such vessels. The complement of a modern battleship is nearly 1000 officers and men; and it may cost as much as $1,000,000 to keep one of these vessels in commission for a year.

Cruisers.—Sea speed and coal endurance are secured for vessels of this class by some sacrifice of guns and armor; but the British battle cruisers of 27,000 tons are superior to most battleships. None of this type are planned in America; but the Navy has 10 armored cruisers of 14,000 tons displacement, armed with 8 and 10-inch guns, and built at a cost of $5,800,000 each. They have a speed of 22 knots; and there are 3 scout cruisers of 3750 tons and 26 knots, a force inadequate to cover the movements of the fleet. The 24 other cruisers and 30 gunboats of obsolete types retained for service during peace are of slight military value.

Torpedo Flotillas.—For attacking a hostile fleet and repelling lighter craft armed with torpedoes, the sea-going destroyer has been advanced to 1000 tons in size and armed with torpedoes ranging 8000 yards. Such vessels cost nearly $750,000, and a number were under construction in the United States in 1912. Larger vessels of the cruiser type are now proposed as substitutes for destroyers. Submarines of like tonnage and cost can cruise for 5000 miles and make submerged runs of 100 miles. Flotillas of destroyers and submarines should be capable of breaking blockades and scattering fleets of transports.

Auxiliaries.—The Navy has 25 colliers, the largest of them having a carrying capacity of 20,000 tons with fittings for rapid coaling in port or at sea. The latest of these vessels are used for testing turbines and electric engines. Aeroplanes and hydroplanes promise to facilitate scouting in the Navy, particularly if they can use wireless telegraphy in reporting.

For a fleet of 24 battleships, 6 armored cruisers, and the necessary flotillas and auxiliaries the 44,000 men provided left some vessels short of their complement, and an increase of 4,000 men have been authorized since 1912, besides 3,500 apprentice seamen.

Legal Status.—Under recent international law, a public vessel is considered both on the high seas and in foreign ports as within the exclusive jurisdiction of the home country. Such vessels are expected to respect "the peace of the port," but infractions are matters for diplomatic representation only. On board the vessel the naval articles of war of the United States are in force; and all enlisted men may be severely punished for refusing duty. In parts of the United States civil courts may punish offenses committed on men-of-war.

See ARMIES AND NAVIES, FOREIGN; COAST DEFENSE; EXTRATERRITORIALITY; MILITARY AND NAVAL EXPENDITURES; NAVIGATION, REGULATION OF; OFFICERS, MILITARY AND NAVAL.

References: *Naval Annual* (1913); F. T. Jane, *Fighting Ships* (1911), *British Battle Fleet* (1912); W. Pulsifer, *Navy Year Book* (1912), 760–794; R. Wainwright and others, "The Fleet" in *Scientific Am.*, CV (1911)

514–536; U. S. Naval Institute, *Proceedings* (1911), 308, 649, 1071, 1446; G. R. Clark and others, *Short Hist. of the U. S. Navy* (1911); E. S. Maclay, *Hist. of the U. S. Navy* (1901–1902); J. R. Spears, *Hist. of our Navy* (1879–98); *Am. Year Book, 1910*, 364, 376, and year by year; *Navy League Annual* (1912); A. T. Mahan, *Interest of America in Sea Power, Present and Future* (1897), "Battleship and Its Satellites" in *Quart. Review*, No. 435 (April, 1913), 457–476; M. F. Sueter, *Evolution of the Submarine Boat, Mine and Torpedo* (1907); W. Wood, *Battleship* (1912); R. A. Fletcher, *Warships* (1911); F. M. Bennett, *Steam Navy of the United States* (1896). C. G. CALKINS.

NAVIES, FOREIGN. See ARMIES AND NAVIES, FOREIGN.

NAVIGABLE WATERS. The navigability of a stream or body of water is in different ways of legal significance and for different purposes different tests are applied in determining the fact.

By the common law of England all tidal waters are deemed to be public in two senses; first, they are free to the public for navigation, and, second, the land underlying them is not subject to private ownership. In some of our states this test is still applied in determining the right of private ownership of land; while in other states, notably those in which titles are derived from the Federal Government, the test afforded by the ebb and flow of the tide is disregarded and the beds of lakes and streams which are in fact navigable belong to the state for the use of the public, while in case of non-navigable lakes and streams, the ownership of the land abutting upon such waters extends to the middle of the channel. In the sale of land by the Federal Government, according to the system of public survey, navigability of the streams and bodies of water involved is determined by the survey itself and if the stream or body of water is meandered then the title acquired from the United States extends only to high water mark. The owner of land abutting upon navigable water has, however, rights of access thereto which are in their nature property rights.

In the protection of the public right of navigation the fact of navigability for useful commerce is the only recognized test in this country. The Great Lakes and smaller lakes and all rivers and streams which are capable of use for the purposes of navigation are in that respect under the public control.

The Federal Government has jurisdiction and authority with reference to all waters within its territorial limits, which are in fact navigable, in two ways: first, its courts are authorized to try cases in admiralty (*see* ADMIRALTY AND MARITIME JURISDICTION), and, second, under the authority to regulate foreign and interstate commerce, Congress may regulate fully their use for the benefit of the public and prevent any diversion of water which will unduly interfere with or diminish their availability for purposes of navigation. But Congress does not have any peculiar jurisdiction with reference to streams merely from the fact that they flow through two or more states. **Reference:** T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 861–868.

EMLIN MCCLAIN.

NAVIGATION ACTS. The navigation acts were the first step in the British mercantile system, which was designed to make the empire self-supporting and to benefit England, rather than, with set purpose, to restrict the activities of the colonies. The act of 1660, which was an amplification of the ordinance of 1651, contained both shipping and trade regulations. The coasting trade, the trade between England and the colonies, and all colonial trade with European countries was to be carried in English or colonial ships. Thus, although the ports of the colonies were closed to foreign vessels, the colonists could trade directly with Europe in English or colonial ships, and were freely admitted to the carrying trade of the empire. The trade regulations, however, required that all sugar, tobacco, and four other "enumerated" colonial products could be shipped only to English or colonial ports.

The act of 1663 still further restricted colonial trade by requiring that all European goods destined for the colonies must first be landed in England, thus giving the British merchants a monopoly of the colonial import trade as well of the chief colonial exports. The act of 1672 seriously limited intercolonial trade by levying duties on the enumerated goods or requiring a bond that they should be shipped solely to England. The act of 1696 provided for the more efficient enforcement of these principles and repealed all colonial laws repugnant to these acts.

See ACTS OF TRADE; BOARDS OF TRADE; COLONIAL INTERNATIONAL RELATIONS; COMMERCE, INTERNATIONAL; COLONIZATION, PRINCIPLES OF; LORDS OF TRADE.

References: C. M. Andrews, *Colonial Self-Government* (1904), 1–21; E. Channing, *Hist. of the U. S.* (1908), II, 7–13, 251–279; W. MacDonald, *Select Charters*, Nos. 22, 25, 28, 34, 43 (text of acts); G. L. Beer, *The Old Colonial System* (1912), 1, ch. ii; H. L. Osgood, *The American Colonies in the Eighteenth Century* (1907), III, ch. vii. EVERETT KIMBALL.

NAVIGATION, BUREAU OF, DEPARTMENT OF COMMERCE. The Bureau of Navigation is one of the bureaus which constitute the Department of Commerce, and it is under the direction of the Commissioner of Navigation. The function of the Bureau is to

report in detail the increase in vessels of the United States, to investigate the operation of the laws relative to navigation, and to report annually to the Secretary of Commerce in what particulars, according to the judgment of the Commissioner of Navigation, the laws admit of improvement or may require amendment. Up to the present, the Commissioner has reported a satisfactory condition in the coastwise and interior navigation, but a steady decline in foreign navigation. A study of the shipping subsidy policies of foreign countries has convinced him that only the adoption of a more liberal policy of ocean-mail subsidies can revive American shipping engaged in foreign commerce, and his recent reports contain recommendations to that effect. The Commissioner regularly criticizes "our antiquated navigation laws," and has recently recommended among other things the repeal of the registration law of 1792, the repeal of much legislation designed for steamships so far as it has applied to motor boats, the alteration of the tonnage law, and fresh legislation dealing with wireless telegraphy. **See** COMMERCE AND LABOR, DEPARTMENT OF; COMMERCIAL POLICY AND RELATIONS; STEAMBOAT INSPECTION; SUBSIDIES TO SHIPPING. **References:** Secretary of Commerce and Labor, *Annual Reports;* Commissioner of Navigation, *Annual Reports.*

A. N. H.

NAVIGATION, BUREAU OF, NAVY DEPARTMENT. The Bureau of Navigation is one of the bureaus of the United States Navy Department. It is charged with the commissioning of officers, the recruiting of the enlisted force, and the manning of vessels in active service. The Bureau also manages the several training stations and naval homes and the United States naval observatory (*see* OBSERVATORIES, PUBLIC), and conducts the publication of the *Nautical Almanac* and the preparation of charts in the hydrographic office for the use of naval officers. **See** NAVAL VESSELS; NAVY DEPARTMENT OF. **References:** Secretary of the Navy, *Annual Reports;* J. A. Fairlie, *National Administration of the U. S.* (1905), 161; C. H. Van Tyne and W. G. Leland, *Guide to the Archives of the Govt. of the U. S.* (2d. ed., 1907), 233.

A. N. H.

NAVIGATION OF INTERNATIONAL RIVERS. General Principles.—The right of navigation of international rivers has been supported by many writers since Grotius (1625), and has been denied by many. From the early days of the nineteenth century there has been a tendency to regulate the navigation of rivers by conventional agreement. By the treaty of Vienna, of 1815, rivers separating or traversing two or more states "from the point where each of them becomes navigable to its mouth shall be entirely free, and shall not, in respect to commerce be prohibited to any one." Special arrangements were made by treaty for special rivers. Tonnage and other duties for the maintenance of the riverways were allowed, as well as reasonable regulations. It does not appear from this treaty that navigation of international rivers was regarded as a right except as secured by convention.

European Rivers.—These are for the most part now open to navigation by virtue of a series of conventions. The Treaty of Paris in 1856 extended the principles of the Treaty of Vienna of 1815 to the Danube, and the carrying out of this arrangement has been entrusted to various commissions since that time.

North America.—The treaty of 1842 between the United States and Great Britain provides that citizens of both countries may freely navigate the river St. John. The navigation of the Columbia river was secured to British subjects by the treaty of 1846 (Art. II); and the navigation of the St. Lawrence to the subjects of the United States by the treaties of 1854 and 1871. The general form of regulation may be seen in Article XXVI of the Treaty of 1871:

> The navigation of the rivers Yukon, Porcupine, and Stikine ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty, and to the citizens of the United States, subject to any laws and regulations of either within its own territory, not inconsistent with such privilege of free navigation.

So the Treaty of 1783 with Great Britain provides: "The navigation of the River Mississippi, from its source to the ocean shall forever remain free and open to the subjects of Great Britain and the citizens of the United States."

South America.—A treaty of 1851 between Peru and Brazil provided that the navigation of the Amazon should be wholly within the control of the riparian states. Protests against the limitation upon navigation were made. A measure of freedom was conceded to all nations by a decree of 1867. Many complications have arisen in regard to the navigation of South American rivers, owing to attempts from time to time on the part of certain states to establish special regulations or to close the rivers altogether.

Asia and Africa.—The navigation of the Congo and the Niger in Africa was declared free and open to all nations by the Berlin Conference of 1884–85. The Chinese rivers were opened to navigation of all states in 1898. The legality of the action of Egypt, in 1906, in closing the Lower Nile to vessels bound for the Congo on the Upper Nile does not seem to have been denied; and it is evident that practice as shown by treaty agreement is favorable to freedom of navigation of international rivers; yet this cannot be claimed as a right in absence of conventional agreement.

See LAKES, JURISDICTION AND NAVIGATION OF; NAVIGATION, REGULATION OF; RIPARIAN RIGHTS; RIVERS, JURISDICTION AND NAVIGATION OF; WATER BOUNDARIES; WATERWAYS, REGULATION OF.

References: J. N. Westlake, *Int. Law* (1909), Pt. I, 141–157; W. E. Hall, *Int. Law* (1909), 1131; J. B. Moore, *Digest of Int. Law* (1906), I, 627–653; E. Hertslet, *Map of Europe by Treaty* (1875–1891).

GEORGE G. WILSON.

NAVIGATION, REGULATION OF. The regulation of navigation by the United States Government is, for the most part, entrusted to the Steamboat Inspection Service (*see*) and the Bureau of Navigation (*see*), established in 1884, both, since 1903, within the Department of Commerce and Labor—since 1913, the Department of Commerce. The chief officer of the Bureau is the Commissioner of Navigation who has jurisdiction over the commercial marine and merchant seamen of the United States. The duties of the Commissioner include the measuring and documenting of vessels (*see* REGISTRY OF SHIPPING); the preparation and publication of a list of documented vessels; the interpretation of tonnage tax laws; the issuance of instructions to the collectors at the ports concerning the entry and clearance of vessels; the enforcement of the laws for the protection of seamen (*see* SEAMEN), the publication of the statistics of merchant shipping and shipbuilding; and the preparation of an annual report to the Secretary of Commerce.

At most ports there is a shipping commissioner to keep a register of the men who may desire to ship as seamen; "to superintend their engagement and discharge in manner prescribed by law," to aid masters of vessels in compelling their seamen to be on board ship at the agreed time; and "to facilitate the making of apprenticeships to the sea service." At the small seaports, the collector of the port is charged also with the duties of shipping commissioner.

Maritime navigation is subject to the laws of pilotage (*see*) and quarantine (*see*). Coastwise commerce is open only to vessels of American registry (*see* COASTING TRADE), and only vessels of American construction and ownership can be enrolled under the flag of the United States. Under certain conditions, vessels built abroad may be registered for the foreign trade.

See COASTING TRADE; INTERSTATE COMMERCE LEGISLATION; LAKES, JURISDICTION AND NAVIGATION OF; MERCHANT MARINE; PILOTAGE; REGISTRY OF SHIPPING; SHIPPING, REGULATION OF; STEAMBOAT INSPECTION; SUBSIDIES TO SHIPPING; WEATHER SIGNALS; WIRELESS TELEGRAPHY.

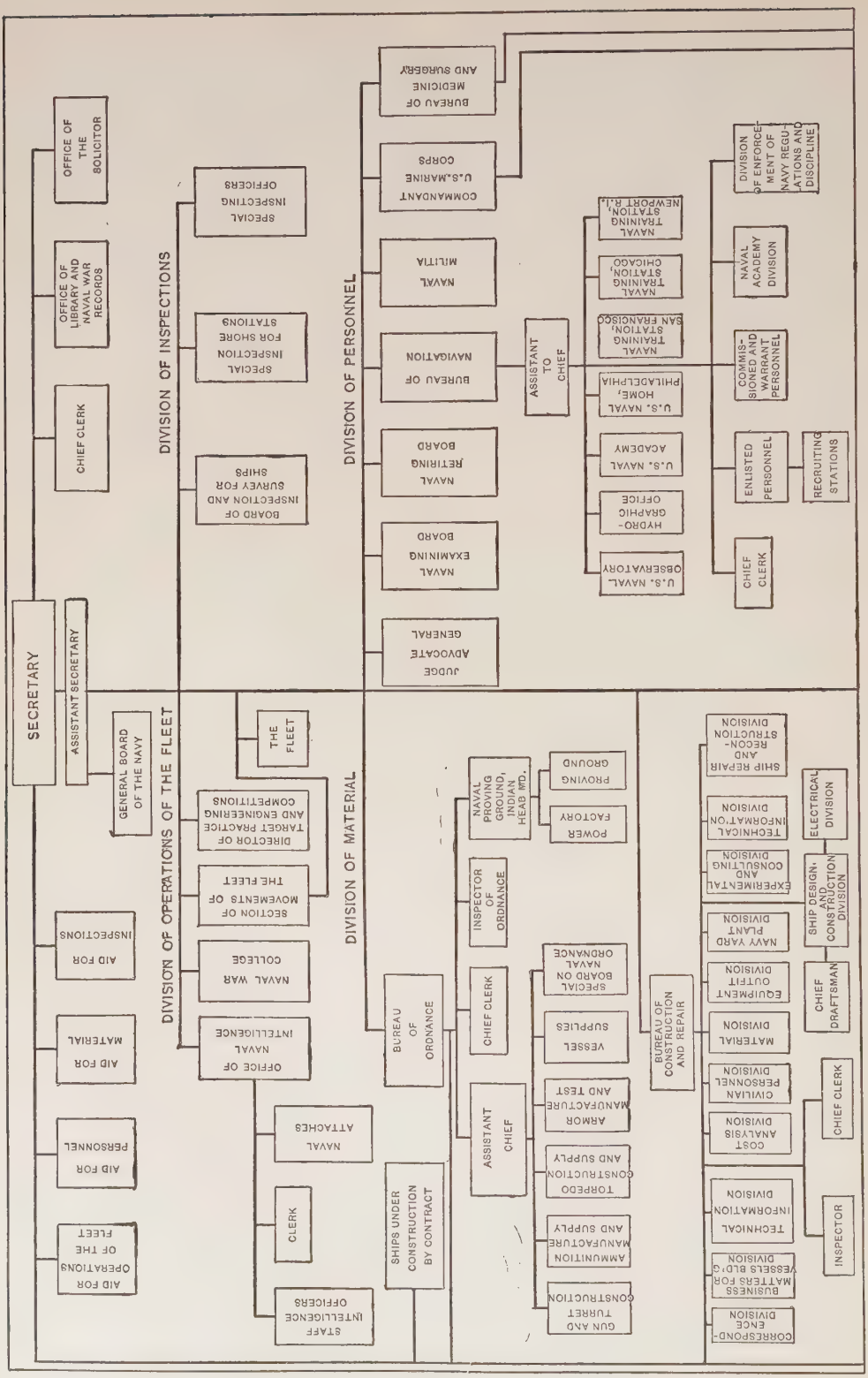
Reference: E. R. Johnson, *Ocean and Inland Water Transportation* (1906), ch. xv.

E. R. JOHNSON.

NAVY, DEPARTMENT OF. After the Revolution, what little was left of the Navy was abolished, and naval affairs were administered by the War Department. In 1794, however, Congress provided for the construction of six frigates, and in 1798 the Department of the Navy was created, with a cabinet officer at its head. Under President Jefferson, naval construction was stopped. The war of 1812 found the United States with sixteen war vessels, which did much to retrieve failures on land. Two improvised fleets—one on Lake Champlain and the other on Lake Erie—added largely to the honors gained on the seas. From 1815 to 1861 the navy languished. Then came Ericson's "Monitor," which revolutionized naval construction. During the War of Secession the navy accumulated 600 vessels of all kinds. During this rapid expansion great frauds were perpetrated on the Department which was endeavoring to cope with an annual expenditure of 140 millions with administrative machinery devised for the expenditure of a single million. Gideon Wells and Gustavus G. Fox, the Secretary and assistant secretary, were men of integrity and capacity; and to the limit of its opportunities the Navy maintained its traditional distinction. After that war, the Navy again was suffered to become obsolete; but under Secretary William C. Whitney, in 1885, the modern Navy began with a complete reorganization of the department. During the war with Spain the naval battles at Manila and Santiago won prestige for the Navy. In 1912 the United States ranked third in sea strength, England being first, and Germany having gone from third to second place during the previous year.

Organization.—The Secretary and assistant secretary are appointed from civil life. The Secretary has the assistance of naval officers who have no executive authority, but keep him informed as to the workings of the Department. They are known as: the aid for operations, who is concerned with the organization and manoeuvers of the fleet; the aid for personnel, who supervises recruiting, the detail of officers and discipline; the aid for material, who examines into repairs of vessels; and the aid for inspection, who expedites the progress of naval work. The assistant secretary has charge of yards and docks and of the marine corps. The general board, composed of the admiral and 13 other officers, formulates plans for the organization and operation of the navy.

The Bureau of Navigation issues and enforces orders to individual officers; has charge of education at the naval academy, the war college, and the schools for enlisted men; keeps the records of service; publishes the *Annual Register*, and deals with matters of discipline. The personnel thus cared for includes (1912) 2,400 commissioned officers, 51,500 seamen, and 10,000 marines, besides the various special corps.


SECRETARY
ASSISTANT SECRETARY
GENERAL BOARD OF THE NAVY
OFFICE OF THE SOLICITOR
OFFICE OF LIBRARY AND NAVAL WAR RECORDS
CHIEF CLERK
AID FOR OPERATIONS OF THE FLEET
AID FOR PERSONNEL
AID FOR MATERIAL
AID FOR INSPECTIONS
DIVISION OF INSPECTIONS
SPECIAL INSPECTING OFFICERS
SPECIAL INSPECTION FOR SHORE STATIONS
BOARD OF INSPECTION AND SURVEY FOR SHIPS
DIVISION OF PERSONNEL
BUREAU OF MEDICINE AND SURGERY
COMMANDANT U.S.MARINE CORPS
BUREAU OF NAVIGATION
NAVAL MILITIA
NAVAL RETIRING BOARD
NAVAL EXAMINING BOARD
JUDGE ADVOCATE GENERAL
ASSISTANT TO CHIEF
NAVAL TRAINING STATION, NEWPORT R.I.
NAVAL TRAINING STATION, CHICAGO
NAVAL TRAINING STATION, SAN FRANCISCO
U.S. NAVAL HOME, PHILADELPHIA
U.S. NAVAL ACADEMY
HYDRO-GRAPHIC OFFICE
U.S. NAVAL OBSERVATORY
CHIEF CLERK
COMMISSIONED AND WARRANT PERSONNEL
ENLISTED PERSONNEL
NAVAL ACADEMY DIVISION
DIVISION OF ENFORCEMENT OF NAVY REGULATIONS AND DISCIPLINE
RECRUITING STATIONS
DIVISION OF OPERATIONS OF THE FLEET
THE FLEET
DIRECTOR OF TARGET PRACTICE AND ENGINEERING COMPETITIONS
SECTION OF MOVEMENTS OF THE FLEET
NAVAL WAR COLLEGE
OFFICE OF NAVAL INTELLIGENCE
NAVAL ATTACHÉS
CLERK
INTELLIGENCE OFFICERS
DIVISION OF MATERIAL
BUREAU OF ORDNANCE
SHIPS UNDER CONSTRUCTION BY CONTRACT
ASSISTANT CHIEF
CHIEF CLERK
INSPECTOR OF ORDNANCE
NAVAL PROVING GROUND, INDIAN HEAD MD.
PROVING GROUND
POWER FACTORY
SPECIAL BOARD ON NAVAL ORDNANCE
VESSEL SUPPLIES
ARMOR MANUFACTURE AND TEST
TORPEDO CONSTRUCTION AND SUPPLY
AMMUNITION MANUFACTURE AND SUPPLY
GUN AND TURRET CONSTRUCTION
BUREAU OF CONSTRUCTION AND REPAIR
CHIEF DRAFTSMAN
SHIP DESIGN, CONSTRUCTION DIVISION
ELECTRICAL DIVISION
SHIP REPAIR AND RECONSTRUCTION DIVISION
TECHNICAL INFORMATION DIVISION
EXPERIMENTAL AND CONSULTING DIVISION
NAVY YARD PLANT DIVISION
EQUIPMENT OUTFIT DIVISION
MATERIAL DIVISION
CIVILIAN PERSONNEL DIVISION
COST ANALYSIS DIVISION
CHIEF CLERK
INSPECTOR
TECHNICAL INFORMATION DIVISION
BUSINESS MATTERS FOR VESSELS BLD'G DIVISION
CORRESPONDENCE DIVISION

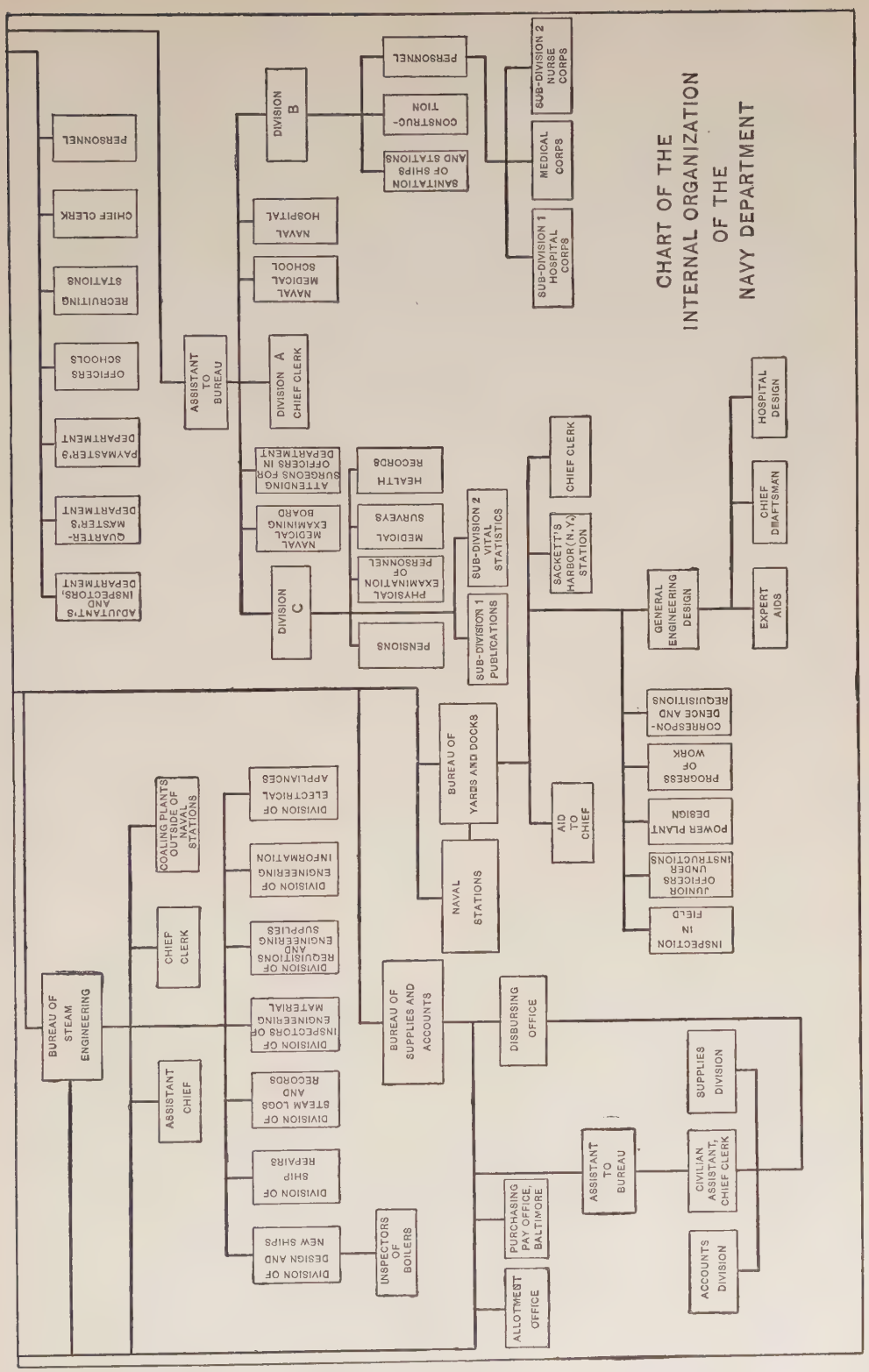


CHART OF THE
INTERNAL ORGANIZATION
OF THE
NAVY DEPARTMENT
BUREAU OF STEAM ENGINEERING
ASSISTANT CHIEF
CHIEF CLERK
COALING PLANTS OUTSIDE OF NAVAL STATIONS
DIVISION OF ELECTRICAL APPLIANCES
DIVISION OF ENGINEERING INFORMATION
DIVISION OF REQUISITIONS AND ENGINEERING SUPPLIES
DIVISION OF INSPECTORS OF ENGINEERING MATERIAL
DIVISION OF STEAM LOGS AND RECORDS
DIVISION OF SHIP REPAIRS
DIVISION OF DESIGN AND NEW SHIPS
INSPECTORS OF BOILERS
BUREAU OF SUPPLIES AND ACCOUNTS
DISBURSING OFFICE
ALLOTMENT OFFICE
PURCHASING PAY OFFICE, BALTIMORE
ASSISTANT TO BUREAU
CIVILIAN ASSISTANT, CHIEF CLERK
SUPPLIES DIVISION
ACCOUNTS DIVISION
NAVAL STATIONS
BUREAU OF YARDS AND DOCKS
AID TO CHIEF
INSPECTION IN FIELD
JUNIOR OFFICERS UNDER INSTRUCTIONS
POWER PLANT DESIGN
PROGRESS OF WORK
CORRESPONDENCE AND REQUISITIONS
GENERAL ENGINEERING DESIGN
EXPERT AIDS
CHIEF DRAFTSMAN
HOSPITAL DESIGN
SACKETT'S HARBOR (N.Y.) STATION
CHIEF CLERK
SUB-DIVISION 1 PUBLICATIONS
SUB-DIVISION 2 VITAL STATISTICS
PENSIONS
PHYSICAL EXAMINATION OF PERSONNEL
NAVAL MEDICAL EXAMINING BOARD
MEDICAL SURVEYS
HEALTH RECORDS
ATTENDING SURGEONS FOR OFFICERS IN DEPARTMENT
DIVISION C
ASSISTANT TO BUREAU
DIVISION A CHIEF CLERK
NAVAL MEDICAL SCHOOL
NAVAL HOSPITAL
DIVISION B
SANITATION OF SHIPS AND STATIONS
CONSTRUCTION
PERSONNEL
SUB-DIVISION 1 HOSPITAL CORPS
MEDICAL CORPS
SUB-DIVISION 2 NURSE CORPS
ADJUTANT'S AND INSPECTORS, DEPARTMENT
QUARTERMASTER'S DEPARTMENT
PAYMASTER'S DEPARTMENT
OFFICERS SCHOOLS
RECRUITING STATIONS
CHIEF CLERK
PERSONNEL

The Bureau of Yards and Docks, officered by civil engineers, controls all public works at navy yards or elsewhere, including hospitals, barracks, and magazines; and makes estimates for construction and for purchase of supplies.

The Bureau of Ordnance has charge of the torpedo station at Newport, R. I., the proving ground and magazines; it supervises the preparation of armor and fabricates the armament of vessels at the Washington shops; furnishes ammunition and explosives; and supervises the handling of machinery on ships.

The Bureau of Construction and Repair is responsible for the designing, building, and repair of all ships built for the Navy, working in consultation with the Bureau of Ordnance and other bureaus.

The Bureau of Steam Engineering deals with machinery used to propel ships, and mechanism incidental thereto; together with signal and electric apparatus, including wireless telegraphy; and with coaling stations.

The Bureau of Medicine and Surgery has jurisdiction over all that relates to hospitals and hospital ships, laboratories and technical schools for the medical, hospital and nurse corps, including the naval medical school at Washington.

The Bureau of Supplies and Accounts deals with the purchase storage and issue of supplies, including coal and water, and the accounts for the same. The judge advocate general's office has jurisdiction over courts-martial, boards of investigation and of promotion and retirement, and all questions relating to regulations and precedence. The solicitor drafts and interprets statutes relating to the Navy, prepares contracts and supervises legal matters generally.

The Office of Naval Intelligence employs six officers and an officer of the marine corps to prepare and publish information in regard to the naval affairs both at home and aboard, for the instruction and guidance of officers. The naval observatory, located in Washington, publishes the *Nautical Almanac*. Although the observatory is in charge of a naval officer, the staff is composed almost entirely of civilians.

The Marine Corps is under a commandant responsible directly to the Secretary. Marines perform guard duty and exercise with the guns on board the vessels of the fleet, but the larger portion of the corps is at shore stations or in the dependencies. The school for officers is located at Norfolk, Va.

Appropriations.—The amount appropriated for naval service, in 1912–13, was $123,220,707, of which sum 37 millions was for pay, 27 millions for armor and armament, and 10 millions for construction and repair of ships.

Tendencies.—The development of machinery in almost every department of its work makes of the department a vastly complicated mechanical establishment. Efficiency and scientific management, concentration of plants and economies in operation are now sought with all the ardor possible in governmental work.

See CABINET OF THE PRESIDENT; EXECUTIVE AND CONGRESS; EXECUTIVE DEPARTMENTS.

References: *Am. Year Book, 1910*, and year by year; Navy Department, *Reports;* J. A. Fairlie, *National Administration of the U. S.* (1905); J. F. Rhodes, *History of the U. S.* V (1904); *Diary of Gideon Wells* (1911), *index title "Union Navy"*; C. O. Paullin, "Naval Administration in U. S." in Naval Institute, *Proceedings*, XXII, XXIII (1906–7); H. B. Learned, *President's Cabinet* (1911).

CHARLES MOORE.

NAVY, SECRETARIES OF. Following is a list of Secretaries of the Navy, since the establishment of the department:

1798 (May 21)—1801 (Mar. 31) Benjamin Stoddert.
1801 (Apr. 1) Henry Dearborn (Sec. War; *ad int.*)
1801 (July 15)—1809 (Mar. 7) Robert Smith.
1809 (Mar. 7)—1812 (Dec. 31) Paul Hamilton.
1813 (Jan. 7) Charles W. Goldsborough (Chief Clerk; *ad int.*)
1813 (Jan. 12)—1814 (Dec. 1) William Jones.
1814 (Dec. 2) Benjamin Homans (Chief Clerk; *ad int.*)
1814 (Dec. 19)—1818 (Sept. 30) Benjamin W. Crowninshield.
1818 (Oct. 1) John C. Calhoun (Sec. War; *ad int.*)
1818 (Nov. 9)—1823 (Aug. 31) Smith Thompson.
1823 (Sept. 1) John Rogers (Commodore, U. S. N.; *ad int.*)
1823 (Sep. 16)—1829 (Mar. 3) Samuel L. Southard.
1829 (Mar. 4) Charles Hay (Chief Clerk; *ad int.*)
1829 (Mar. 9)—1831 (May 12) John Branch.
1831 (May 13) John Boyle (Chief Clerk; *ad int.*)
1831 (May 23)—1834 (June 30) Levi Woodbury.
1834 (June 30)—1838 (June 30) Mahlon Dickerson.
1838 (July 1)—1841 (Mar. 3) James K. Paulding.
1841 (Mar. 4) John D. Simms (Chief Clerk; *ad int.*)
1841 (Mar. 5)—1841 (Sept. 11) George E. Badger.
1841 (Sept. 11)—John D. Simms (Chief Clerk; *ad int.*)
1841 (Sept. 13)—1843 (July 23) Abel P. Upshur.
1843 (July 24)—1844 (Feb. 15) David Henshaw.
1844 (Feb. 15)—1844 (Feb. 28) Thomas W. Gilmer.
1844 (Feb. 29) Lewis Warrington (Capt. U. S. N.; *ad int.*)
1844 (Mar. 14)—1845 (Mar. 10) John Y. Mason.
1845 (Mar. 10)—1846 (Sept. 9) George Bancroft.
1846 (Sept. 9)—1849 (Mar. 7) John Y. Mason.
1849 (Mar. 8)—1852 (July 22) William B. Preston.
1850 (July 22)—1852 (July 22) William A. Graham.
1850 (July 23) Lewis Warrington (Capt. U. S. N.; *ad int.*)
1852 (July 22)—1853 (Mar. 7) John P. Kennedy.
1853 (Mar. 7)—1857 (Mar. 6) James C. Dobbin.
1857 (Mar. 6)—1861 (Mar. 5) Isaac Toucey.
1861 (Mar. 5)—1869 (Mar. 3) Gideon Welles.
1869 (Mar. 4) William Faxon (Asst. Sec.; *ad int.*)
1869 (Mar. 5)—1869 (June 25) Adolph E. Borie.
1869 (June 25)—1877 (Mar. 12) George M. Robeson.
1877 (Mar. 12)—1880 (Dec. 20) Richard W. Thompson (recommissioned, Mar. 17, 1873).
1880 (Dec. 20) Alexander Ramsey (Sec. of War; *ad int.*)
1881 (Jan. 6)—1881 (Mar. 5) Nathan Goff, Jr.
1881 (Mar. 5)—1882 (Apr. 12) William H. Hunt.
1882 (Apr. 12)—1885 (Mar. 6) William E. Chandler.
1885 (Mar. 6)—1889 (Mar. 5) William C. Whitney.
1889 (Mar. 5)—1893 (Mar. 6) Benjamin F. Tracy.
1893 (Mar. 6)—1897 (Mar. 5) Hilary A. Herbert.
1897 (Mar. 5)—1902 (Apr. 29) John D. Long (recommissioned, Mar. 5, 1901).
1902 (Apr. 29)—1904 (July 1) William H. Moody.
1904 (July 1)—1905 (July 1) Paul Morton (recommissioned, Mar. 6, 1905).
1905 (July 1)—1906 (Dec. 12) Charles J. Bonaparte.
1906 (Dec. 12)—1908 (Dec. 1) Victor H. Metcalf.
1908 (Dec. 1)—1909 (Mar. 5) Truman H. Newberry.
1909 (Mar. 5)—1913 (Mar. 5) George von L. Meyer.
1913 (Mar. 5) Josephus Daniels.

A. B. H.

NAVY YARDS. There are 11 navy yards belonging to the United States, three of them on islands in the Pacific; and 20 naval stations of various classes at home and abroad. Their total cost prior to June 30, 1910 was $299,138,106, distributed as follows:

Stations	Date of Establishment	Original Cost of Site	Total Expenditures for Plants	Total Maintenance, Including Repairs	Total Cost of Land, Public Works, Plants, and Maintenance	Average Yearly Cost of Maintenance for Five Years
First-class navy-yards (at home):						
Portsmouth	1800	$110,500.00	$10,006,929.89	$8,720,582.09	$18,838,011.98	$428,595.15
Boston	1800	360,782.26	14,015,799.50	16,007,646.23	30,384,227.99	916,535.41
New York	1801	590,123.15	25,867,974.92	31,177,278.60	57,635,376.67	1,958,452.92
Philadelphia	1868	Gift	11,015,439.94	10,269,160.47	21,284,600.41	708,093.69
Washington	1800	157,099.00	11,969,124.71	13,197,175.25	25,323,398.96	728,695.26
Norfolk	1800	478,517.50	15,733,682.19	16,113,733.15	32,325,932.84	1,006,598.64
Mare Island	1854	83,491.00	17,644,057.09	17,363,162.17	35,090,710.26	1,051,424.93
Puget Sound	1891	18,212.50	5,610,377.53	3,769,602.96	9,398,192.99	469,012.97
Second-class navy-yards (at home):						
Charleston	1901	105,207.00	3,569,045.79	778,381.52	4,452,634.31	142,952.88
Pensacola	1828	----------	7,700,637.10	4,516,794.01	12,217,431.11	340,011.95
New Orleans	1849	15,000.00	2,684,151.18	701,984.69	3,401,135.87	112,098.79
First-class navy-yard (abroad):						
Hawaii	1899	58,140.50	1,577,814.35	590,700.73	2,226,655.58	89,318.43
Second-class navy-yards (abroad):						
Cavite	1898	----------	2,523,136.35	8,723,088.71	11,246,225.06	1,056,401.84
Olongapo	1901	----------	2,908,849.48	909,515.30	3,818,364.78	177,265.33

It is now proposed to reduce expenses at the less important navy-yards like those at Pensacola and New Orleans; and other sites, including New York and Boston, may be condemned for strategic reasons. The establishment at Norfolk and a new navy-yard on Narragansett Bay may then be equipped to serve as bases for a fleet with an important station at Guantanamo, Cuba. Pearl Harbor near Honolulu and the navy-yard on Puget Sound may become the chief establishments for the Pacific. Only four of the navy-yards will be prepared for docking the largest battleships now under construction.

See JURISDICTION OVER FEDERAL STATES; MILITARY AND NAVAL EXPENDITURES; NAVAL VESSELS; PUBLIC BUILDINGS, FEDERAL, STATE AND MUNICIPAL.

References: W. Pulsifer, *Navy Yearbook, 1912*, 799–802 and year by year; U. S. Navy Department, *Annual Reports* (1912), 42–51, 119–123 *House Reports*, 61 Cong., 2 Sess., No. 796 (1910). C. G. CALKINS.

NEAR EAST, DIPLOMATIC RELATIONS WITH. The Near East is a general term, commonly used to include the Balkan States, the Turkish Empire, Persia, and the Mediterranean countries of Africa. The policy of the United States has been to follow the decisions of the concert of European powers as to the status of these lands; though it has never, except in the case of Morocco, joined in the international discussion regarding them, and even then did not consider itself a regular member of the conferences. It has been the practice of the American Government to demand, in general, privileges and concessions extended by any Near Eastern country to any European power, such as extraterritoriality. Where portions of this region have been annexed by European countries, as Algiers and Tunis, the United States has accepted the extinction of the independent state.

Joint political action with European powers has thus been avoided so far as possible. The United States and Great Britain, however, have agreed that their ambassadors and consuls in Turkey shall coöperate in the protection of the citizens of the two countries.

Corsair States.—The earliest relations of the United States with the Near East were brought about by American vessels, during and shortly after the Revolution, trading with the Corsair States of North Africa. Treaties were, therefore, made with Morocco, in 1787, with Algiers in 1795, with Tripoli in 1796, and with Tunis in 1797, by which immunity was purchased (*see* BARBARY POWERS, DIPLOMATIC RELATIONS WITH) for American ships by large payments of money. Further demands by Tripoli led to war in 1801. Tripoli's defeat led to a new treaty in 1805. A short naval struggle with Algiers secured, in 1815 the most favorable commercial treaty then granted by any of the pirate states.

Extraterritoriality in Turkey.—A treaty was negotiated with the Ottoman Empire in 1830, which is the basis of American rights in Turkey, though the privileges of extraterritoriality, thereby gained have long been a subject of dispute. The American contention is based upon an admitted mistranslation of the treaty of 1830, and is not in accord with the practice of the European states.

Missionaries and Schools.—American missionaries, who have established nearly 600 religious, educational and charitable institutions in

the empire, have been the cause of the largest number of diplomatic disputes. Their rights rest primarily upon the capitulations (*see*), which are grants made by the Sultans from the fifteenth century onward, confirming to the foreign and Christian communities in Turkey substantial self-government.

The United States, largely on the basis of long-established custom, has insisted upon all the privileges given by the capitulations; and the Ottoman Government has conceded this claim. The enforcement of capitulation rights, however, has led to difficulties. In 1903 the United States demanded that the American schools should receive official legalization and have their property registered in the name of the institution—privileges which France obtained in 1901. Though the justice of this claim was admitted, the necessary decrees were not issued.

The United States next insisted that the rank of its diplomatic representative should be raised from minister to ambassador in order that he might hold personal interviews with the Sultan. After considerable opposition this was conceded by Turkey in 1906. The following year the Sultan granted the American schools the privileges demanded, in return for certain commercial concessions.

Emigrants.—The status of Ottoman subjects, naturalized in the United States and then returned to Turkey, has been a long-standing cause of friction. The United States insists upon protecting such persons though, by the law of Turkey, they are still its subjects. No European government makes any similar claim. A naturalization treaty to settle the controversy was signed, 1874, but never ratified. The Turkish Government refuses to permit its subjects, naturalized in the United States since 1869, to return to Turkey; and if found in the country they are frequently expelled.

Brigands.—To protect Americans from brigands and mobs is part of the duty of United States ministers and consuls. They aided in releasing Miss Stone, captured by Bulgarian revolutionists in 1901; and Perdicaris, kidnapped by Raisuli in Morocco, 1904. Indemnity demanded from Turkey for the loss of life and property of Americans in the massacres of 1895–96 has not (1914) been paid.

Commerce.—Commercial interests have been increasingly important the past decade. In 1907 the United States insisted with success upon its equal right with the European powers to pass upon any proposed increase in Turkish customs rates. American diplomacy is increasing trade and securing commercial concessions. The contract for supplying a water system for Muscat was recently awarded to Americans; the proposal of "The Ottoman-American Development Company" to build 2,000 miles of railroad in Asia Minor was considered but was not accepted.

Turkish Dependencies.—In Egypt the United States joined with other powers in establishing the international courts, 1876, to have general jurisdiction over civil and commercial cases between foreigners and natives; it designates one of the nine foreign judges of the Court of Appeals in Alexandria. In Morocco, also, it united with eleven European states in making the treaty of Madrid, 1880, which regulated the rights of foreigners in that country; and later signed the Algeciras Convention of 1906 (*see*), which was ratified by the Senate with the proviso that the United States did not intend "to depart from the traditional American foreign policy."

Roumanians.—In the Balkans the only important diplomatic incident has been the protest against the treatment of the Roumanian Jews, who were being forced to migrate to the United States. Secretary Hay appealed to the signatories of the treaty of Berlin, 1878, since this forbade Roumania to discriminate against any of her inhabitants on religious grounds. The protest effected a noticeable improvement in treatment of the Jews.

Persia.—With Persia a commercial treaty was made in 1856. In 1911 the United States Government selected five American experts to supervise Persia's financial affairs. The appointees were soon forced by Russian opposition to leave the country.

Consuls.—Extraterritorial privileges are exercised by American consuls in Turkey, Egypt, Persia, Morocco, Muscat and Tripoli.

See BALANCE OF POWER; CAPITULATIONS, TURKISH; EXTRATERRITORIALITY.

References: F. E. Hinckley, *Am. Consular Jurisdiction in the Orient* (1906); J. B. Moore, *Am. Diplomacy* (1905), 63–72, 191–199, *Digest of Int. Law* (1906), II, 661–751, III, 616, 620–1, 656, 679–708, V, 584–586, 795–839, VI, 359–367; W. M. Malloy, *Treaties and Conventions of the U. S.* (1910).

GEORGE H. BLAKESLEE.

NEBRASKA

Early History.—Nebraska existed as a territory from May 30, 1854, to March 1, 1867. Its original area, extending to the Canadian frontier, was curtailed by the creation of Colorado and Dakota, in 1861, and the establishment of Idaho, in 1863. During its territorial life, Nebraska had five governors: Francis Burt of South Carolina who died, Oct. 18, 1854; Mark W. Izard of Arkansas; William A. Richardson of Illinois; S. W. Black of Pennsylvania, and Alvin Saunders of Iowa—the last the only one to establish a residence

in the state. The first territorial secretary, Thomas B. Cumings became acting governor, on the death of Governor Burt and it was under his vigorous leadership that territorial organization actually took place. Two later secretaries, J. Sterling Morton, and A. S. Paddock, both subsequently prominent political leaders, also served as acting governors.

Boundaries of the State of Nebraska, Showing Territorial Changes

The first territorial legislature, consisting of a council of 13, and a house of 26—later 39—members, met at Omaha, in December, 1854. Few important questions arose in Nebraska's territorial history. Slavery played little part in its life, and was abolished in 1861. The contest between the North and South Platte regions, culminating in 1858–59, became so bitter that an earnest effort was made to divide the territory and join the South Platte country to Kansas. In these early days acts of special legislation consumed a large portion of the energy of the legislators; charters for "wildcat" banks; for ferries, bridges, and roads; for colleges and universities fill the statute books. Previous to 1861, the Democrats easily controlled the politics of the territory, but with the outbreak of the Civil War many Democrats joined the Republican party, so that from 1861 to 1867, there was a slight balance in favor of the Republicans. In a third attempt at statehood, a constitution was formed and ratified in 1866, by a vote of 3938 to 3838. As this constitution limited suffrage to white males, Congress required as a preliminary to statehood that all racial discriminations be forbidden. The legislature having acceded to the demand, President Johnson, on March 1, 1867, proclaimed Nebraska a state of the Union.

Present Constitution.—To remedy the glaring defects of this first constitution, a constitutional convention met in 1871, but the people rejected its work. The present constitution was framed in 1875 under two conditions which gave it tone: the first, the hard times following the crisis of 1873, and the local drought of 1874; the second, the spirit of the Grange (*see*). From the first came the provisions limiting the number of officials, fixing low salaries, and in general giving a "cheap" cast to the document. Out of the Grange movement grew its anti-monopoly features which have enabled the state in recent years to pass "progressive" measures. The constitution limits the number of senators to 33, and members of the house to 100. It provides for an elective judiciary, consisting of a supreme and district courts; for elective heads of the executive departments; manhood suffrage including foreigners with first papers and a residence of six months; impeachment in joint session of the two houses of the legislature, and trial by the judiciary; strict regulation of corporations, including provisions for the maintenance by all railroads of a public office in the state,

against consolidation of competing lines, or increase of stocks or bonds except under prescribed conditions, and all rate discriminations. Local government may be either county, or mixed township-county as the people of each county shall determine. The state constitution forbids special city charters, but by dividing cities into various classes, as "metropolitan," "first class" (with differing populations), this clause has become a dead letter. The school system is founded on the district as the unit. County superintendents manage the rural schools, but all certificates are granted through the state superintendent's office. The state university and the four normal schools grant certificates, under law. Because of inability to secure another constitutional convention, the legislature has proposed many amendments, but as the constitution requires a majority of all votes cast to carry an amendment, only four had been adopted previous to 1912. The first, in 1886, extended the length of the legislative session from 40 to 60 days with five, instead of three dollars per day, salary; the second, in 1906, provided for an elective railway commission, consisting of three members. Two amendments were added in 1908: one increased the number of supreme court judges from three to seven, and raised their salaries from $2500 to $4500 per annum; the other provided that the permanent school fund might be invested in other than national or state bonds. The legislature of 1911 proposed five additional amendments, all of which were adopted by the people in the election of 1912. The first provided for the initiative and referendum; the second for a non-partisan board of control for all charitable and penal institutions; the third for biennial elections; the fourth for municipal self-government in cities of 5000 inhabitants and over; and the last that all bills, except executive bills, must be introduced in the first 20 days of the session, and that the salaries of members of the legislature should be $600, for a term of two years. The legislature of 1913 submitted three amendments to be voted on in the general election of 1914: The first widened the taxing power of the legislature, following closely the Wisconisn plan; the second increased the salaries of most of the state officers, for example, raising the governor's from $2500 to $4500; and the third authorized five-sixths of the jury to bring in a verdict in civil suits.

Parties.—Politically the history of the state may be divided into three quite distinct periods. In the first, extending from 1867 to 1890, the Republicans controlled every branch of the state government. On the whole it was an era of political conservatism and industrial development. The railroad influence was pronounced, and as it was a period when railroads were a necessity, the people were willing to extend them aid and, perhaps, grant them undue power and privileges. The first governor was impeached and convicted for corruption and malfeasance in office. On the whole, however, scandals were not numerous, nor, on the other hand, can it be said there was much progressive legislation. The second period, from 1890 to 1900, was more complex, important, and far more interesting. During these years parties were in a state of constant change, and rarely were all the branches of government in the hands of the same party at the same time. The election of 1890 was a triangular contest. The Democrats elected the governor by a vote of 71,331 to 70,187 cast for the Populist candidate, and 68,878 for the Republican nominee. The People's Independent or "Populist" party carried the legislature. In the five biennial elections from 1890 to 1900, the Democrats elected the governor in 1890, the Republicans in 1892, and the "Fusionists" the other three times. The Populists or Fusionists controlled the legislature except during one biennium, 1895–1897. For the four years 1897–1901 all political branches of the state government were in the hands of the Fusionists. The third period is marked by the return to power of the Republicans in the election of 1900; and for eight years they controlled the state, but, with the exception of 1904, by narrow margins. The Democrats won the governorship and the legislature in 1908; lost the governorship, but retained control of the legislature, in the election of 1910; and won the governorship and the lower house of the legislature but lost the upper house, in the election of 1912. Wilson received the electorial vote of the state.

Legislation.—Inexperience, and the rather heterogeneous character of the Populist legislature, prevented it from realizing in any large way its program of reform; yet it put on the statute books the first Australian ballot law, a corrupt practices act, passed a radical railroad rate bill which the governor vetoed, and made investigations which unearthed considerable corruption in the management of certain public institutions. On the whole, while reform was in the air, it was not until 1907, that radically progressive steps were taken. The Republican legislature of that year enacted a series of remedial measures. The most significant, perhaps, were a fairly satisfactory primary election act, a law against using railroad passes, and a pure food bill. The Democratic legislature of 1909 added a law closing all saloons at eight o'clock; also one providing for physical valuation of railroads. It changed the "closed" to an "open" primary with the result that the liquor question became the dominant one in the campaign of 1910. In spite of this handicap to constructive legislation, several remedial measures of merit were passed. The most important ones were the establishment of a legislative reference bureau; provision for the beginnings of a

"good roads" campaign; the appointment of a board of pardons; an appropriation for the codification of the laws of the state; and finally a return to the "closed" primary which includes careful registration provisions, a vote on presidential candidates, the election of delegates to national conventions and of party committeemen by the people. On account of the clause in the state constitution which forbids the creation of any new offices, a large portion of the business of the modern state, arising from its growth and development, is conducted by deputies, wardens, commissions and commissioners—officers unknown to the constitution. There are banking boards, fire and game wardens, oil inspectors, food, health, and labor deputy commissioners, etc., almost without limit. The legislature of 1913 passed a number of important measures, among which may be enumerated the following: a workman's compensation act which seems to satisfy neither side entirely; an up-to-date insurance act; a "blue-sky" law; and made provision for the organization of the board of control, for a minimum wage commission, and for a mediative board in labor disputes. Mother's pensions were also established. A bill against loan-sharks, provision for county-owned telephones, and a maximum rate of twenty-five cents for a ten word telegram within the state, were also put on the statute books. The question of removal of the state university from the city campus to the state farm was submitted to the voters to be decided in the election of 1914.

The population of Nebraska was returned in 1855 as 4494; in 1870, 122,933; in 1880, 452,402; in 1890, 1,058,910—a return padded by at least 100,000; in 1900, 1,066,300; in 1910, 1,192,217.

See KANSAS-NEBRASKA BILL.

References: A. Watkins, *Outlines of Nebraska Hist.* (1910), *Illustrated Hist. of Nebraska*, I (1905–1907); A. E. Sheldon, *The Nebraska Constitutional Conventions* (1907–1912), *History and Stories of Nebraska* (1913); Nebraska Historical Society, *Transactions* (1885–1907). H. W. CALDWELL.

NECESSARY AND PROPER. In determining the implied powers of the Federal Government, under the accepted theory that it is a government possessing enumerated and not general powers, the term "necessary and proper" has been generally used to discriminate those powers which are incidental to and by implication included in the expressed powers described in the Federal Constitution (*see* IMPLIED POWERS). In the use of this term it is not to be understood that the powers conferred by implication are limited to those which are absolutely necessary for the execution of the powers expressly conferred. Within the description are properly included all the means appropriate for the exercise of the express powers and reasonably appropriate to the legitimate ends which are authorized by the constitutional enumeration; and in determining what means are appropriate, discretion is conferred upon the Federal Government. In determining whether any action of the Federal Government is within its implied powers, the courts have only to consider whether such action is calculated in any appreciable degree to advance the constitutional ends which are authorized in the general enumeration. While there has been a marked tendency toward the enlargement in scope of the powers of the Federal Government by liberal construction to the extent even of some general statements to the effect that all sovereign power not reserved to or authorized to be exercised by the states must by implication rest in the Federal Government, the term necessary and proper has not been authoritatively extended to cover those powers which may be deemed essential to the public welfare as distinguished from those essential in the exercise of the enumerated powers of the government itself. The term seems to be properly used only to designate such powers as must by reasonable implication be presumed to have been intended in the delegation to the Federal Government of sovereignty as to matters as to which national authority is under the general tenor and theory of the Constitution essential. See CONSTRUCTION AND INTERPRETATION; IMPLIED POWERS; MCCULLOCH *vs.* MARYLAND. References: T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 105–111; E. McClain, *Constitutional Law* (1910), 194–196. E. McC.

NEGLIGENCE. The failure to do that which a reasonable man would have done under all the circumstances, or the doing of something which a reasonable and prudent man would not have done under all the circumstances, whereby another person or persons are injured. "Circumstances" as used herein include the situation and knowledge of the parties involved. H. M. B.

NEGOTIATION OF TREATIES BY THE UNITED STATES. **Authority.**—The treaty-making power itself, that is, the authority to enter into binding international agreements with foreign powers is, in the United States, confided by the Constitution to the President and the Senate (Art. II, Sec. ii, ¶ 2). All of the preliminary negotiations leading up to such agreements and the drafting of the instruments of agreements are, for the most part, in the hands of the President, in whom is vested the general control of foreign relations and the conduct of foreign correspondence; which functions he of course performs through the Secretary of State. This has been the general constitutional practice. It would seem, however, that there are no constitutional reasons why the Senate itself should not partici-

pate in these preliminary negotiations. Indeed, it was probably the intention of the framers of the Constitution that it should do so, and there have been some instances, especially during the earlier years, in which it was done. Practical experience soon showed, however, the difficulty of attempting to associate the Senate in any formal way with the negotiations of treaties, but in fact that body, and especially its committee on foreign relations is usually kept well informed as to the progress of international negotiations; and at times certain of its members have served as commissioners for the settlement of foreign controversies. Thus three of the five commissioners for the negotiation of the treaty of peace with Spain in 1898 were Senators and members of the Senate committee on foreign affairs.

Senate.—The power of the Senate to amend a project of a treaty submitted to it by the President is unquestionable, and, indeed, is explicitly declared by the Supreme Court in Haver *vs.* Yaker (9 *Wall.* 32). If amended, and then adopted, the President may, in his discretion, give or refuse to it his approval. If he approve it, and the ratification of the other country party to it is secured, it does not need to be again submitted to the Senate, but may be at once promulgated (*see* RATIFICATION OF TREATIES).

Binding Force.—As a general proposition a nation is not required to know or consider the constitutional system of the other powers with which it has international dealings, each sovereign state being presumed to have the constitutional as well as the actual power to fulfil its international obligations whether these be founded upon specific agreements or upon the general principles of international law. There is, however, one exception to this general principle. This is that both nations must know the location of the treaty-making authority of the government with which it is dealing. It is not, therefore, a just ground of grievance to a foreign power when a projected treaty agreed to between itself and the President of the United States is amended or rejected by the Senate.

Plenipotentiaries.—Whether or not it would be constitutionally possible for the Senate and the President to agree to the appointment of commissioners with the power not only to negotiate but to ratify a treaty, has not been passed upon by the courts, no opportunity for such a judgment having been afforded them. Where, however, as is usual, plenipotentiaries are appointed and instructed generally as to the subjects concerning which they may come to an agreement with the commissioners similarly appointed by another or other states, the United States, as well as those other States, are under strong moral and political obligations to ratify the agreements arrived at; unless, indeed, their commissioners have clearly gone outside of the spheres of discretion assigned them. There is, however, no constitutional obligation upon the President to submit to the Senate for its approval a treaty that has been agreed to and signed by the commissioners appointed for its negotiation. Indeed, the President may withdraw from the Senate a treaty which he has submitted to it, or even refuse his final assent to it after it has received the approval of that body (*see* MINISTERS).

Agreements.—Finally, with reference to the negotiation of treaties it is to be said that there are many and important kinds of international agreements regarding which practice has sanctioned the doctrine that they do not need to be submitted to the Senate at all. Thus the President as Commander-in-Chief of the Army and Navy may, in times of war, enter into military conventions, and, as chief executive, may, in times of peace, settle controversies, especially those relating to the fundamental claims of American citizens upon foreign powers, without the coöperation or approval of the Senate. So also he may agree to "protocols" (*see*) and *modus vivendi* (*see* MODUS VIVENDI) without senatorial assistance. And, in addition to the foregoing, the President has by statute and by general treaties often been given the individual authority to enter into agreements with foreign states with reference to specific matters.

Ancillary Legislation.—Treaties are, by the Constitution, declared to be parts of the supreme law of the land. They, therefore, need no further legislative sanction in order that they may be recognized as law by the courts, and their provisions, so far as self-executory, be applied and enforced. Not infrequently, however, ancillary congressional legislation is required for their enforcement. Thus, especially, appropriations of money may be called for. In such cases it would seem that there is a moral and political obligation upon Congress to act, though it is to be conceded that in case that body refuses or neglects to act, no constitutional means exists for compelling it to do so. While it is true, therefore, that Congress often has within its power to bring to naught the international agreements negotiated and entered into by the treaty-making branch of the government, it cannot be said that Congress participates in any way in the negotiation and ratification of treaties. For these treaties, even when the necessary ancillary legislation of Congress is refused, still remain as valid agreements between the United States and the foreign states concerned, which the courts will enforce so far as they are able, and which, in all their provisions, bind the United States internationally, and furnish to the other contracting powers full justification for complaint or reprisal, or, in extreme cases, even of war, in so far as they are not or cannot be enforced by the United States. For as has been earlier

said, no nation may plead a constitutional *non possumus* as an excuse for not fulfilling its international obligations.

See ANNEXATIONS TO THE UNITED STATES; CANAL DIPLOMACY; COMMERCIAL POLICY AND RELATIONS OF THE UNITED STATES; DIPLOMACY AND DIPLOMATIC USAGE; FOREIGN POLICY OF THE U. S.; INTERCOURSE OF STATES; INTERNATIONAL CONGRESSES; INTERNATIONAL UNIONS; PAN AMERICAN CONGRESSES; PEACE, CONCLUSION OF; POLITICAL POWER; RATIFICATION OF TREATIES BY THE UNITED STATES; RECIPROCITY POLICY; TREATIES IN INTERNATIONAL LAW; TREATIES OF THE U. S.; and diplomatic relations with countries by name.

References: J. W. Foster, *Practice of Diplomacy* (1910); C. H. Butler, *Treaty Making Power of the U. S.* (1902); R. T. Devlin, *Treaty Power Under the Constitution of U. S.* (1908); S. B. Crandall, *Treaties: Their Making and Enforcement* (1904).

W. W. WILLOUGHBY.

NEGRO PROBLEM

Origin.—The presence of the negro race in America is historically an anomaly, outside the experience of mankind, and contrary to the principles of American religion and government. The forcible transfer of several hundred thousand persons from one continent to another, where they became the ancestors of 10,000,000 people, separated by race and social customs from the neighbors among whom they live diffused, has few precedents in recorded history. The system of chattel slavery, the consequence of which did not stop when the bondmen were set free, was out of accord with those principles of law, government and Christianity, which the English settlers brought with them to America. The only excuse was that by forced labor the white man could more speedily and more to his own advantage extract the bounties of nature.

Race.—The first element in the negro problem is the presence in America of two alien races, both practically servants. The Indians were savages, and helped to keep alive savage traits in the souls of the white settlers; but there was no considerable number of mixed bloods, and the Indians faded away as the white people advanced. The original slaves were also savages, just out of the jungle, who required to be watched and handled like savages, but they steadily increased in numbers, and from the beginning there was a serious race admixture. Their descendants in the second and third generation were milder in character, and were much affected by at least a surface Christianity; but their standards of character were much lower than those of the dominant white community, and tended to pull the superior race down. To the present day the low conditions of great numbers of negroes has a bad effect on the white race.

Distribution.—The problem has, throughout three centuries, been made more difficult by the dispersion of the negroes. In some commonwealths, particularly South Carolina and Mississippi there are more negroes than whites; in some counties they are three, five or ten times as numerous; but in general they are distributed in the same communities with white people, city or rural. Hence the negro problem is known in some form to nearly every county south of Mason and Dixon's Line, and to all the large cities North or South. Partly from climatic conditions, partly from the unceasing propaganda against slavery in the North since the eighteenth century, the number of negroes has always been comparatively small in the North.

The evils of slavery, and of the continuance of the former servile race, after slavery was gone by, have always been centered chiefly in the regions between the Atlantic coast and the Red River and Rio Grande. On the other hand slavery involves questions of labor, citizenship, criminal law, and property rights, which have to be settled by state governments, so that throughout slavery times there was a series of internal constitutional conflicts between the slave holding and substantially non-slave holding communities. Furthermore, the Federal Government, as soon as it was formed, discovered that a Congress in which half the members came from non-slave holding states had to legislate on slavery questions. The irregular distribution of the negro population has therefore put a torsion on the whole system of American government (Const. Art. I, Sec. ii, ¶ 3).

Mulattoes.—Another element in the question is the well known fact that somewhere from a sixth to a fourth of the persons included in the legal designation of negroes have some white blood. This middle class is forming all the time, though the greater number of mulatoes are children of mulattoes; and it has complicated the whole negro problem. In intelligence and in good looks it is the most favored part of the race, it is also the most likely to value freedom, and furnishes most of the leaders. Through inheritance and closer knowledge of the white peoples' lives the mulatto element constantly partakes of the white man's ambitions and wants a white man's chance. The effort to make a legal distinction between the mulattoes and the pure blood negroes in Hayti, led to the massacre of 1795, and the average point of view of the white

Percentage of Negroes
IN TOTAL POPULATION
of the
UNITED STATES
1910
Less than 1 per cent
1 to 5 " "
5 " 10 " "
10 " 15 " "
15 " 25 " "
25 " 35 " "
35 " 50 " "
50 per cent and over
CANADA
MEXICO
PACIFIC OCEAN
ATLANTIC OCEAN
DOMINION OF
Longitude West from Greenwich
L.L. POATES ENGR'S CO., N.Y.

race has been that the mulatto is more dangerous that the pure negro. The mulatto race is both a mark of and provocation to the demoralization of white men. Yet to give the mulatto special favor and advantages because part white would encourage an eventual fusion of the two races. Hence, the solid determination of the whites down to the present day that mulattoes as well as pure blood negroes shall not be admitted to any kind of social equality.

Slavery.—The status of the negro as a slave has been discussed (*see* SLAVERY AS A LABOR SYSTEM). It was a status from which the English nation had just emerged, neither chattel slavery nor villenage being recognized by English law at the beginning of colonization. Most of the European continental countries in 1600 still recognized serfdom, and in addition considered it Christian and lawful to enslave pagans. Doubtless a few Africans were held as slaves in England during the sixteenth and seventeenth centuries, and persons who took the wrong side in the English Civil War and Monmouth's Rebellion were freely sold as life slaves. That slavery was contrary to the whole fibre of English liberty, is clearly shown by the fact that no colony ever recognized the possibility of a servitude of white persons which could be transmitted to their offspring; and after 1789, outside of a very small class of apprentices and bound servants, with the special case of soldiers and sailors, no person who could prove that he was white could be held as a bondman of an individual.

If the negroes had possessed the same color as their masters, slavery would undoubtedly have died out a century earlier than it did. It was possible to maintain it in the face of the ordinary presumptions of law only because of the accusing shade which marked the possessor as one upon whom the burden was substantially thrown of proving his freedom, if he had it. This universal belief that a dark color is a proof of unusual legal status is still of great significance; a family which for generations has supposed itself white may be reduced to misery by the discovery that there was a colored ancestor.

Legal Discriminations.—The effect of colonial laws was to create three classes: free whites; free negroes; and slaves. In Massachusetts there seems never to have been any legal distinction between freemen, whatever the color; but in most of the northern colonies, and all the southern, the free negro was subject to special restrictions. Some acts innocent for white people, such as assembling, might be criminal for the free negro; some acts, such as the murder of a white person, might be more severely punished if committed by a free negro. Throughout slavery times these restrictions continued. Ohio had a black code under which the testimony of negroes was not received on equal terms with that of white men. The Supreme Court of the United States, in 1856 (19 *How.* 393), decided that no negro, descendant of an African slave, could become a citizen of a state, or presumably of the United States.

The three reconstruction (*see*) amendments were designed to break up these distinctions, and were measurably successful. All negroes are now born and remain free; all negroes born within the United States are citizens of their state and of the United States; no negro can by reason of his color be deprived of his vote; no state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States. A negro is entitled to the same tribunals, the same penalties, and the same treatment as white persons under similar circumstances. The laws of some states discriminate against them by granting privileges which are determined by race as for instance by the right of one's forbears to vote before 1867. So, certain offences, such as breach of contract to labor, are likely to be committed by negroes because they are the ordinary contract laborers; but the letter of the law throughout the Union recognizes no difference between the rights of a negro and the rights of a white man.

Social.—It is otherwise with the social status. Laws prohibiting marriage between the members of the two races are on the statute books of most of the states of the Union, and are enforced. The Federal Government, in 1875, passed a Civil Rights Act intended to secure the negroes equal privileges in inns, places of public amusement and the like, but that act was subsequently held invalid by a decision of the Supreme Court of the United States in 1883 (109 *U. S.* 3). The states make many race discriminations, particularly the so-called Jim Crow laws, by which the railroads, and in some states street cars, are forbidden to carry white and negro passengers in the same cars, provided the accommodation for negroes is equal to that for the whites. The schools throughout the South are separated. In no public institution in the South are negroes and whites educated together. Some efforts have been made to create negro quarters by local ordinances prohibiting negroes from living within certain districts, and whites from living within other districts which are supposed to be available for negroes. It is not yet settled whether such restrictions are prevented by the Fourteenth Amendment of the Constitution.

Outside of these written restrictions and discriminations is a world of unwritten custom. No southern white person under any ordinary circumstances will sit at the same table with a negro, or be a guest at any public or private entertainment with him, or ride in the same carriage, if both are passengers. The social relations between the two races are, therefore, much more constrained

than in slavery times. The opportunity of converse, of personal influence, of the transmittal of culture from the superior to the inferior is nearly lost. Furthermore, no white person is expected to teach negroes in public or private schools, though there are some cases of white professors in higher institutions or professional schools, and a few white teachers in lower schools. These rules are not so inexorable in the North, though in many clubs no member would think of inviting a negro as his guest, and white and black children and students have little association with each other where they are educated together. Many of the northern trades unions will not admit negroes, though in the South some of the unions have a mixed membership.

Crime.—A part of the problem is the criminality of both races. In all the United States the number of crimes is unduly large, especially in the South; and the negro criminals are more numerous than their proportion of the population. This is perhaps saying no more than that the poorest and most ignorant in every community produce the most criminals. Inasmuch as the governments of all the southern states are entirely in the hands of the whites, who make the laws, choose the judges, draw the juries, and prosecute the cases, the responsibility of impartial justice is thrown upon them. The race which has control of the administration of justice is nevertheless unable to prevent mob violence and lynch law, which is usually, though not invariably, applied to negroes, often for very trivial causes (*see* LYNCHING). The negroes are generally believed to hide and protect criminals of their race, which is perhaps an inheritance of slavery times, but sometimes impedes the course of justice.

Education.—A serious problem is that of education. The reconstruction governments provided a system of free common schools for all the children, and every state in the Union makes provision for negro children, either as a part of the general mass or in separate schools. The separate rural negro schools are usually much behind the white schools in buildings, and particularly in teachers, since the teachers are usually of the same race, and are often themselves uneducated. Very few negroes get beyond the common schools, rural or city. Public high school education is now provided for the negroes in few southern cities. The non-public negro colleges, most of them sustained by northern gifts, are practically secondary schools with a few college students. The present system of education does not furnish enough highly trained men to serve as leaders for the next generation.

Summary.—The negro problem is the presence of about 10,000,000 people of a race believed by the dominant race to be inferior, and actually contributing very little to the effective intellectual and moral forces of the country, except among themselves. This 10,000,000 includes, however, the greater part of the labor for hire in the South. All those people in their government, their employment, their law and justice are in the hands of the white race, having neither a genuine suffrage nor the hope of it as a protection.

See EDUCATION AS A FUNCTION OF GOVERNMENT; FIFTEENTH AMENDMENT; FOURTEENTH AMENDMENT; FREEDOM, PERSONAL; NEGRO SUFFRAGE; PEONAGE; POPULATION OF THE UNITED STATES; RECONSTRUCTION; SLAVERY CONTROVERSY.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, xciv–xcv; A. B. Hart, *Slavery and Abolition* (1906), *National Ideals Historically Traced* (1907), ch. iii, *Southern South* (1910); E. G. Murphy, *Problems of the Present South* (1904); G. W. Capps, *Negro Question* (1888); W. G. Brown, *Lower South* (1902); T. N. Page, *The Negro: The Southern Problem* (1904); U. S. Census Bureau, "Negroes in the U. S.," in *Bulletin*, No. 8 (1904); J. R. Commons, *Races and Immigration* (1907), ch. iii; bibliography in W. E. B. Du Bois, *Select Bibliography of the American Negro* (1901); A. P. C. Griffin, *Select List of References on the Negro Question* (1903); F. Kapp, *Geschichte der Sklaverei in den Vereinigten Staaten von Amerika* (1861).

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NEGRO SUFFRAGE

Colonial Conditions.—In England and in America the suffrage is not a right but a privilege, everywhere restricted to persons intellectually capable of taking responsibility, often restricted to people who read and write or to people who have paid certain taxes, sometimes restricted by race as in parts of South Africa. The North American colonies borrowed the English requirements of ownership of land or payment of a considerable tax, but in eleven of the thirteen colonies which joined in the Revolution, in 1775 a person of negro blood who had the property qualifications was entitled to vote. The other two colonies, South Carolina and Georgia, repeated the prohibition in their first state constitutions; but for seventeen years no other states took such action, and in some of the New England communities the laws ceased to make any distinction in any respect between negroes and whites.

Constitutions Before 1861.—A change began with Delaware in 1792, followed by Kentucky in 1799; Maryland in 1810; Virginia in 1830; and North Carolina in 1835, together with Tennessee in which the expression "every freeman" in the state constitution was con-

strued to mean white men only. In addition, every new state that came into the Union south of Mason and Dixon's line before the Civil War, including Missouri, came in with constitutions which prohibited negro suffrage. In the northern states negroes were shut out in Connecticut in 1814; in New Jersey in 1807; in Pennsylvania in 1838. New York, after 1821, set special restrictions, though not an exclusion from voting, on the negro. Every one of the northwestern states admitted into the Union previous to the Civil War put a clause against negro suffrage into its original constitution. Hence, from a state of things in 1775 in which negroes could vote in all but two out of thirteen commonwealths, the point was reached in 1861 where they could vote only in five (Maine, New Hampshire, Massachusetts, Rhode Island and New York) out of thirty-four states.

Granting of Suffrage.—During the Civil War the idea sprang up that the negroes might be safeguarded by giving some of them the suffrage. The enlistment of nearly 200,000 negroes as soldiers brought out the suggestion that a man that could handle a bullet was competent to handle a ballot. In December 1863, Secretary Chase, the most extreme anti-slavery man in Lincoln's cabinet, suggested that inasmuch as there were so few loyal white men available, perhaps some of the freedmen might be allowed to take part in reconstructing Louisiana. March 13, 1864, Lincoln wrote to Hahn in Louisiana:

> I barely suggest for your private consideration whether some of the colored people may not be let in: as for instance the very intelligent, and especially those who have fought gallantly in our ranks.

Nevertheless, neither in the Louisiana nor in Arkansas nor in the West Virginia government (*see*) nor in any of the northern states where they had not the right before, were negroes admitted to the suffrage before the end of the Civil War.

During the temporary reconstruction of 1865, most of the southern states, through conventions representing a small part of their people, gave suffrage to the negroes; and in the second reconstruction, under acts of Congress all the former seceding states were obliged to accept the same system. Inasmuch as these constitutions were subject to amendment by the people of the states, Congress, February 26, 1869, submitted the Fifteenth Amendment, which declares that:

> The right of citizens of the United States to vote shall not be denied nor abridged by the United States, or by any state on account of race, color, or previous condition of servitude.

This amendment when ratified in 1870 removed all the remaining northern restrictions as well as the southern.

Facts Concerning Voting.—Of the total negro population of nearly 5,000,000 in 1870, probably 800,000 to 900,000 were men above 21 years of age, and therefore added to the electorate by state laws and constitutions supplemented by the Fifteenth Amendment. Most of them were in the southern states, and they were a majority in two, South Carolina and Mississippi. In all the northern states and in about half of the southern states negro men of legal age, who have fulfilled the educational or tax qualifications, if any, today vote alongside of white men; but in every southern state there is strong opposition to the negro. Negroes are practically not allowed to vote in most communities, or at least to have their votes counted, if it would change the balance of parties; in six of the states the negro suffrage is nearly extinguished. For a long time there were negro members in the national Senate and House. The last of them retired in 1895. To the northern state legislatures occasionally a negro is chosen, particularly from districts where there is a large negro vote, which it is desirable to placate. A few county and town elected negro officers still exist in the South. In general, it is probable that of the 2,000,000 or more adult members of the negro race in the United States in 1910, not more than 200,000 would have been received had they presented themselves at the polls in a state or national election.

Power of Withdrawing Suffrage.—The process of withdrawing the suffrage from the negroes began in 1874, when the territorial government of the District of Columbia was abolished by Congress. Meanwhile from 1870 on the Klu Klux (*see*) movement in the South was reducing the negro votes by frightening the negroes away from the polls. Congress passed a series of statutes intended to protect the negroes, particularly the Enforcement Act of May 31, 1870; the Act for Federal Supervision of Congressional Elections, Feb. 28, 1871; and the Ku Klux Act of April 7, 1871, which authorized the President to use troops for the protection of the rights of the negroes. Notwithstanding these measures the white voters recovered state after state, beginning with Virginia in 1869. Till, in 1876, in only three southern states, Louisiana, Florida and South Carolina, was the choice of presidential electors declared to be for candidates for whom the negroes voted (*see* RECONSTRUCTION).

From that time on, in most of the states of the South in which there was a considerable negro population, negro suffrage as an element in state government nearly ceased to be. The four methods usually employed to eliminate the negro votes were: (1) violence, a crude and temporary method not confined to Southern elections nor to the negro race; (2) electoral tricks—including according to a Southern writer—theft of the ballot boxes, secretion of the ballot boxes, exchanging boxes, removal of the polls to unknown places, doctoring the returns, false certifications, repeating, excising names

from the registry book, and illegal arrests before the day of election, other means were the tissue ballots, and the "eight ballot box law" of South Carolina, imitated elsewhere; (3) tax qualifications, often rather high and usually surrounded with technical regulations which worked against an ignorant voter; (4) constitutional restrictions.

The negro vote in Missouri, Maryland, and to some extent in Kentucky was little affected by false or fraudulent methods. Farther south there was an apprehension that somehow or other the negroes would get back to power, an apprehension sharpened by the fusion of the North Carolina Republicans (including the negroes) with the Populists in 1892, through which some state officers were elected and a colored member of Congress. Hence, from 1890 to 1904 six states—Alabama, Kentucky, Louisiana, Mississippi, North Carolina and Virginia—altered their constitutions so as to set the greater part of the negro vote permanently out of commission.

State Constitutional Provisions.—To avoid the "race, color or previous condition of servitude" clause of the Fifteenth Amendment (*see*), the new provisions must, on their face, have a general application; yet must not be applied so as to cut out any considerable number of white voters. No two states adopted the same provisions, but the whole may be analyzed as follows: (1) persons guilty of serious crimes (in one case, of petty larceny) are thereby disfranchised, and negro criminals are more numerous in comparison to their population than the whites; (2) two states fix a moderate property qualification as one of several alternatives; (3) prepayment of poll taxes, sometimes for a considerable term of years is required in all six states; (4) in two states, South Carolina and Mississippi, proof of the payment of poll taxes must be shown at the polls, and negroes are careless about preserving the necessary papers; (5) an educational qualification appears in all six states, but in two states a property qualification will be accepted as a substitute, and one will accept ability to give "a reasonable interpretation" to a section of the Constitution; (6) in three states the voter who has shown to the satisfaction of the authorities that he understands a clause of the Constitution, remains a voter for life without farther qualifications but it is not expected that negroes will convince the authorities that they understand the Constitution; (7) in five of the six states, by the so-called "grandfather clause," the descendant of a person who was a voter prior to January 1, 1867, may vote though he cannot satisfy the intelligence nor property qualification; of course only whites can take advantage of this clause; (8) in three states, former Union or Confederate soldiers are excused from the usual qualifications.

In three of the six states these clauses were set in operation by the convention without submission to the people for a popular vote. The effect of them has been to cut down the negro vote to as low as five per cent of the adult negro men. In Maryland two unsuccessful attempts have been made to pass a constitutional amendment in the same direction with those of the other six states. In every state the few negroes who can satisfy one or the other of the requirements are registered, if there are not too many of them; but there is widespread feeling that a considerable number of negroes will eventually be able to offer educational and small tax qualifications and that sooner or later means will have to be found to exclude most of those who thus acquire the suffrage. Many of the negroes, particularly their leader, Booker T. Washington, advise the race to give up for the time being concerning itself about the suffrage.

The principal defect of the amendments of the South is that they are planned to shut out ignorant negroes while admitting ignorant whites to vote; and advocates of the amendments have repeatedly assured the public that "none of our people" have lost their votes. In the six states, the number of negroes averages about one-third that of the white people, but the votes that are allowed them are probably less than a thirtieth as many as those of correspondingly ignorant white voters.

Reasons.—In a country in which the normal type of suffrage is universal manhood suffrage with deductions for special reasons affecting comparatively small classes, the attitude toward negro suffrage requires explanation. In slavery times every free negro South or North was a standing disproof of the necessity of slavery, hence it was inevitable that negro suffrage should be withdrawn in all southern communities. The western states in *ante bellum* times prohibited negro suffrage because they did not wish to attract free negroes. In Pennsylvania, and New York, there was a considerable city population of negroes who were at the bottom of the social scale.

At the end of the war there was a genuine feeling based on the previous experience of ignorant foreigners, that the suffrage was an educating and elevating privilege which would help raise people out of ignorance. Nobody now knows how far that might have been true of the negroes, inasmuch as most of the southern communities were under military government down to 1868 or 1869, and in 1871 began the process of shutting off the negro vote, first by violence, then by fraud. The reconstruction governments were extravagant, venal and partisan, but no more so than the contemporary government of the city of New York (*see* TAMMANY). The onset on negro suffrage prevented that division of the negro vote which was expected at the outset, and out of which might have come a political education. The main argument against negro suffrage is the uneasiness of northern communities in which numer-

ous negroes vote on exactly the same conditions as the whites; but in such communities there are sometimes direct or indirect educational qualifications which diminish the danger from ignorant voters of all races.

The fundamental hostility to negro suffrage has never been the dislike of an ignorant electorate, but goes back to a race feeling intensified by the former servile condition of the negroes, and the general belief that if they got into power they would demoralize the public and private life of the state. In its extreme logical consequence this argument would, and does, substantially apply to allowing any considerable number of negroes to vote, however intelligent or thrifty, so that the suffrage question is inextricably mixed with the general negro problem.

See BRIBERY; DEMOCRACY AND SOCIAL ETHICS; DISFRANCHISEMENT; FIFTEENTH AMENDMENT; FRAUDS, ELECTORIAL; INTIMIDATION; MINORITIES, RIGHTS OF; NEGRO PROBLEM; RECONSTRUCTION; SOLID SOUTH; SUFFRAGE.

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NETHERLANDS, DIPLOMATIC RELATIONS WITH. American diplomatic relations with the Netherlands began in 1778 with the mission of John Adams who, notwithstanding English protests, conducted negotiations to a successful issue and on October 8, 1782, signed with the Dutch deputies and plenipotentiaries, a treaty of peace and commerce securing valuable privileges. It was abrogated in 1795 by the conversion of the Netherlands into the Batavian Republic, substantially a province of France.

The Netherlands were represented in the United States from October, 1783, to September 1795; the Batavian Republic from August 1796 to October 18, 1802. William Short was commissioned minister resident to the Netherlands in 1792, and J. Q. Adams in May, 1794. William Vans Murray was American minister resident to the Batavian Republic from 1797 to 1801. When the kingdom of Holland (succeeding the Batavian Republic) was incorporated into the French empire, direct negotiations ceased.

In 1814, diplomatic relations with the Netherlands was resumed at Washington through Changuion and at the Hague through Eustis. The Dutch envoy, claiming that the termination of the political existence of his country from 1795 to 1814 had abrogated all previous treaties, proposed negotiations for a new treaty of amity and commerce. These negotiations failed, but the United States after long correspondence finally acquiesced in the view that the old treaty had been abrogated.

In 1815, America began to press claims for seizure of vessels in Dutch ports in 1809–10, for which the Dutch Government denied responsibility; after discussion for five years the subject was dropped. In the two decades following the only diplomatic event of consequence was the arbitration of the northeast boundary question in 1831 by the King of the Netherlands.

From 1839 to 1860, three treaties were negotiated. That of commerce and navigation of January 19, 1839, was amended by a convention of August 26, 1852. A consulate convention was negotiated in 1855. During the American Civil War the Dutch Government as a neutral maintained toward the American Union a friendly attitude, which indicated that Confederate agents would receive no countenance. After the war, the spirit of good will and harmony continued.

The most important subjects of diplomatic correspondence after 1870 were discriminating or differential duties affecting trade with the Dutch colonies (especially from 1880 to 1886), and military drills imposed on naturalized American citizens in Dutch jurisdiction (1887).

In this period several conventions or agreements were negotiated: a consular convention of 1878; an extradition convention of 1887, modified and extended to the colonies by a convention of 1904; a commercial agreement of 1907; and an arbitration convention of 1908.

See ARMED NEUTRALITY; COMMERCE, AMERICAN, MOVEMENT OF; NEGOTIATION OF TREATIES.

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J. M. CALLAHAN.

NEUTRAL TRADE DURING THE NAPOLEONIC WARS. In 1793 France was practically at war with Europe, and the United States was the one power sufficiently remote to act with some degree of freedom. The treaty of alliance (1778) caused France to expect special favors from the United States. Washington, in 1793, issued the neutrality proclamation which he later called the "index" to his plan, as he was determined to maintain an attitude of peace and amity toward all foreign nations.

The trade of the United States was not respected, however, and contentions and counter contentions were made. Occasionally mitigations in the restrictions upon neutral commerce were introduced, as by the French decree of January 4, 1795, only to be followed by the decree of March 2, 1797, largely limiting American commerce. The United States, in 1798, passed various acts to protect her commerce. Other interference on the part of the belligerents led to the reassertion in 1800 of the attitude of armed neutrality of 1780 (*see*), by Russia, Prussia, Sweden, and Denmark. The decrees and orders-in-council (*see* MILAN DECREE; ORDERS-IN-COUNCIL) were issued without regard to the rights of neutral trade. In the United States domestic restrictions (*see* EMBARGO ACTS; NON-INTERCOURSE) checked and almost destroyed the growing neutral trade. The decline during the year 1808 was to nearly one-fifth the volume of the previous year. The failure to meet the purpose of many of the restrictions placed upon trade since 1793 began to be evident. Certain restrictions were withdrawn by the French in 1801 and a somewhat more liberal policy prevailed from this time. It seemed necessary, however, for the United States, by the use of force in the War of 1812 with Great Britain, to indicate certain of her contentions to freedom of the seas and of commerce. The convention with Great Britain, July 3, 1815, after the close of the war, established freedom of trade.

The position of friendly impartiality toward belligerent powers proposed by Washington in 1793, and made clear in regulations and in the Act of Congress of June 5, 1794, was subsequently made more definite by the act of 1818, which became the basis of much of the law regulating neutral trade.

See BERLIN DECREE; BLOCKADE; CONTINENTAL SYSTEM; MILAN DECREE; NEUTRAL TRADE, PRINCIPLES OF; NEUTRALITY, PRINCIPLES OF; ORDERS IN COUNCIL; PRIVATE PROPERTY AT SEA; PRIVATEERS; RULE OF 1756; TREATIES OF THE UNITED STATES.

References: L. A. Atherley-Jones, *Commerce in War* (1907); J. B. Moore, *Digest of Int. Law* (1906), XI, 586–615; E. Channing, *Jeffersonian System* (1905); K. C. Babcock, *Rise of Am. Nationality* (1905), 22.

GEORGE G. WILSON.

NEUTRAL TRADE, PRINCIPLES OF. Trade in which neutrals engage may be: (1) between neutral states and belligerent states; (2) between subjects of neutral states and belligerent states; (3) between subjects of neutral states and subjects of belligerent states.

Trade between states which might be unquestioned in time of peace, may, if carried on between a neutral and a belligerent state in time of war, be in violation of what are considered the rules of neutrality. A state in time of peace may sell to another state arms, warships, and other military supplies. Such trade is in general prohibited in time of war, though in case of need a neutral state might sell to a vessel of war entering one of its ports a supply of coal sufficient to enable the vessel to reach its nearest home port.

Trade between subjects of a neutral state and of a belligerent state is, in time of war, on a different footing from that of trade between states. The subject of the neutral state has no international status which will make him liable, except to the consequences which follow his act. A neutral state which has failed to observe its neutral obligations and has sold war supplies to one belligerent may be bound to pay indemnities to the other belligerent at the end of the war.

The subject of a neutral state who has regularly engaged in trade in war materials during the war is considered as liable only to loss of his goods if they are captured by the other belligerent. His state will not protect him in this trade, but is not called upon to prevent trade in contraband.

Trade during war is, however, more commonly between a subject of a belligerent and a subject of a neutral state. Coal consigned by a neutral subject to a belligerent government would clearly be liable to capture save under very exceptional circumstances. Coal consigned by the subject of a neutral to the subject of a belligerent state might be liable to capture or might go free according to circumstances. The presumption would be in favor of its exemption from capture and for capture it would be necessary to give reasonable proof that the coal was destined for military use (*see* CONTRABAND). In general, trade by neutral subjects in goods not contraband of war is free even though the goods may be on ships of the enemy (*see* FREE SHIPS MAKE FREE GOODS). As trade is usually free to the subjects of neutral states, the trade usually in the hands of subjects of belligerents is often transferred to neutrals on the outbreak of war or even in anticipation of war. Sometimes this advantage to the neutral is more than offset by the conditions under which the war is waged. Neutral trade may also be limited by the declaration of the belligerent that it will regard certain articles as contraband, or by the closing of certain ports by blockade.

See BLOCKADE; CONTINUOUS VOYAGES; CONTRABAND; FREE SHIPS MAKE FREE GOODS; PRIVATE PROPERTY AT SEA; PRIZE LAW AND COURTS; RIGHT OF SEARCH; RULE OF 1756.

Reference: L. A. Atherley-Jones, *Commerce in War* (1907).

GEORGE G. WILSON.

NEUTRALITY, ARMED. See ARMED NEUTRALITY.

NEUTRALITY, PRINCIPLES OF. **Slow Development.**—The ancient idea was that all who were not friends were enemies. The idea

that there could be a state which should not be of one or the other party to the war was of slow growth, and during the mediaeval period the conception of a neutral state would be incompatible with the imperial ideas prevailing in regard to political relations. Even Grotius, in 1625, gave very little attention to the subject under the caption, "*De his qui in bello medii sunt.*" He maintains that:

> It is the duty of those who stand apart from the war to do nothing which may strengthen the side whose cause is unjust, or which may hinder the movements of him who is carrying on a just war, and, in a doubtful case, to act alike to both sides, in permitting transit, in supplying provisions to the respective armies, and in not assisting parties besieged.

In the treaties of the seventeenth century there were some attempts to establish neutral relations. In the eighteenth century the multiplication of treaties by text writers led to a clearer conception of neutrality and Bynkershoek in 1757, used the word "*non-hostis*," non-enemy, to describe the idea saying, "I call those non-enemies who are of neither party in a war. If I am neutral, I cannot advantage one party lest I injure the other." This is a considerable advance over the seventeenth century idea. Even Henry Wheaton, in 1836, says, "There are two species of neutrality recognized by international law. These are: (1) natural or perfect neutrality; and (2) imperfect, qualified, or conventional neutrality." From the middle of the nineteenth century the idea of neutrality became more definite. Phillimore says, "It is of the essence of his neutral character that he so retain this central position, as to incline to neither belligerent." The additional idea that neutrality must not only be observed but must also be enforced developed gradually. The neutrality proclamation (*see*) issued by Washington in 1793, and followed by American legislation in 1794, and 1818, and by the British act in 1819, gave definiteness to the actual obligations resting upon neutrals. Subsequent legislation of these and of other states has made the idea of neutrality much more comprehensive than the early writers had thought possible. Acts which Grotius and Vattel would regard as proper on the part of belligerents towards neutrals or *vice versa* are now forbidden under severe penalties. It is now considered that neutrality is something more than impartiality and involves in practice not merely duties of abstention, but also duties of prevention, toleration and regulation.

Effect of Existing Treaties.—The plea which was often made in earlier days that action favorable to a belligerent is taken by a neutral in consequence of a treaty obligation would not at present be considered valid. Troops, ships, supplies, or other aid were often furnished under treaty agreement and such action was regarded as consistent with neutrality. Sweden, however, protested when Denmark, in 1788, furnished aid to Russia, even though this was in accord with a preëxisting treaty. Denmark replied that, so long as the troops and ships did not exceed the number stipulated in the treaty there could be no ground for protest. These troops were withdrawn, however, when other powers intervened to support the contention of Sweden.

Prohibitions to Individuals.—The neutrality proclamation of the United States, of 1793, contained positive prohibitions. Washington said:

> I do hereby make known that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be intituted against all persons who shall, within the cognizance of the courts of the United States, violate the law of nations with respect to the powers at war, or any of them.

This assumption of certain positive obligations upon the part of the neutral power as regards its citizens is an advanced position over that which had simply allowed the belligerent in the exercise of the right of war to capture neutral vessels and to condemn them if they had violated the laws of war, and to cause subjects of neutral states to suffer for acts which they had committed in violation of neutrality if they were taken within the belligerents' jurisdiction.

The duty to exercise a certain amount of prevention was assumed in addition to the recognized obligation to abstain from interference. This duty of prevention became more defined during the nineteenth century.

Unneutral Acts.—Certain acts by the belligerent had long been tolerated by neutrals as visit and search of merchant vessels on the sea, but these rights, so-called, became more clearly defined during the nineteenth century.

In general it came to be regarded as contrary to neutrality to permit the enlistment of soldiers in neutral territory, the passage of troops through neutral territory, the loan or gift of supplies or money by a neutral state to a belligerent state, or the use of neutral territory as a base for fitting out warlike expeditions or as a military or naval base.

It is not, however, obligatory upon a state to prevent trade between its subjects and belligerents (*see* NEUTRAL TRADE).

Test During the Civil War.—A test of the laws of neutrality came in consequence of the case of the Confederate vessel *Alabama*, fitted out in England in 1862. The Alabama and other Confederate vessels preyed upon the commerce of the United States. In deciding whether the United States had a claim for damages, Great Britain and the United States agreed upon the three rules of the Treaty of Washington by which a neutral government is

bound: (1) "to use due diligence to prevent the fitting out, arming or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace" and likewise to prevent its departure from port; (2) not to allow the use of its ports or waters as a base; (3) "to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties." The award in favor of the United States of fifteen and one half million dollars attracted great attention to the necessity of observation of neutrality though there was much difference of opinion as to the meaning of "due diligence" which was obligatory upon neutrals. The Hague Convention of 1907 concerning the Rights and Duties of Neutral Powers in Naval War, Article 8, says:

> A neutral government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace.

Maritime Neutrality.—In days when warfare was largely an engagement of forces on land, the principles of neutrality so far as evolved were comparatively simple. The development of warfare on the sea has given rise to many new questions in regard to fitting out ships, furnishing supplies, permitting repairs, passage through and sojourn in neutral waters, etc. Other questions involve the use of telegraph, wire and wireless. The use of the airspaces for scouting by war balloons and other airships and the use of the air for other war purposes has still further extended the possibility of the application of the principles of neutrality.

See Alabama, Controversy; Asylum, Diplomatic; Belligerency; Continuous Voyages; Contraband; "Free Ships Make Free Goods"; Good Offices; Impressment; Intervention; Maritime War; Neutral Trade; Neutrality Proclamation; Protection of Citizens Abroad.

References: R. Kleen, *Lois et usages de la Neutralité* (1898–1900); W. E. Hall, *Int. Law* (1909), 71–77, 576 *et seq.*; L. Oppenheim, *Int. Law* (1912), II, 347 *et seq.*; M. Burrows, *Foreign Policy of Great Britain* (1895), chs. ix–xi; C. B. Benton, *English and French Neutrality* (1864); H. Grotius, *De Jurre Belle ac Pacis* (1625), 2, 15, ch. xvii; H. Wheaton, *Elements of Int. Law* (1836), § 413; J. D. Richardson, *Messages and Papers* (1896), I, 15; J. B. Moore, *Int. Arbitration* (1898), I, 499.

George G. Wilson.

NEUTRALITY PROCLAMATION OF 1793. When war broke out between France and England in 1793, the situation was as follows. The United States was a weak nation with no prestige, no known stability, no navy. Its foreign trade was relatively large and carried chiefly in its own ships. Hostility to England still existed. Gratitude to France went along with sympathy with the political faith preached by France. American aid might be valuable to France especially on the sea. The guaranty of French West Indian possessions, by the treaty of 1778, still held good if the war were defensive. On the other hand, war with England would inevitably wipe out this country's commercial marine and perhaps plunge it into irremediable evils.

When, in April, 1793, Genêt fitted out privateers and set up prize courts under French consuls, he presented a concrete case for decision—should the country side with the French or should it keep aloof from foreign rivalries?

The Proclamation of Neutrality of April 22, 1793, was the answer; it marked a turning point in Americas foreign policy, and was perhaps the most important act of Washington's presidency. Though it did not contain the word "neutrality," it was a precedent of weight in the history of international law, in that it forbade "committing, aiding or abetting hostilities" against any of the powers at war under penalty, and warned of the risk of condemnation if contraband goods were carried.

See Great Britain, Diplomatic Relations with; Jay Treaty; Neutrality, Principles of.

References: J. S. Bassett, *Federalist System* (1906), 86; J. B. McMaster, *Hist. of People of U. S.* (1892), II; W. MacDonald, *Select Documents of U. S. Hist.* (1911), 112; A. B. Hart, *Foundations, Am. For. Pol.* (1902), 24; J. Schouler, *Hist. of the United States* (1880), 262 *et seq.*; J. Winsor, *Narr. and Crit. Hist. America* (1688), VII, 464.

T. C. Woolsey.

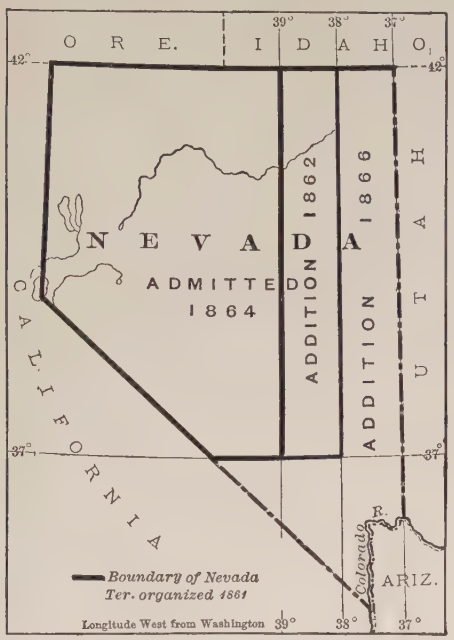
NEUTRALIZATION OF CANALS. Propositions for the neutralization of artificial water ways have frequently been made. The Suez Canal is neutralized by an international agreement. Canals of a peculiarly national character such as the Kiel Canal and the Corinth Canal are considered as within national jurisdiction. The Panama Canal which partakes both of a national and international character is by treaty agreement with Great Britain subject to a qualified neutralization.

See Canal Diplomacy; Panama Canal; Suez Canal; Waterways, Regulation of.

G. G. W.

NEVADA. The government of Nevada has always been complicated by the fact that it has only a very small population scattered over 110,690 square miles; in 1880 Nevada had 62,266 people, and in 1910, 81,875, the greater part being connected with mining and transportation industries. Acquired from Mexico

by treaty in 1848, Nevada was first a county of California and then of the territory of Utah; it was admitted as a state in 1864 to meet an emergency in the political program of the Republican party.



Boundaries of the State of Nevada, Showing Territorial Changes

The legislature consists of a senate of 20 members, elected for four years, and an assembly of 49 members elected for two years; the membership of the senate must be not more than one-half, nor less than one-third that of the assembly. The legislature meets biennially in sessions limited to fifty days; special sessions are limited to twenty days. The referendum as applied to state laws, upon petition of ten per cent of the voters, was made effective in 1904 (*see* Legislation, Direct; Referendum).

The governor, lieutenant-governor, and six other executive and administrative officers are elected for four years, with the usual powers of such officers, save that the governor exercises the pardoning power only as a member of the board of pardons, and may adjourn the legislature in case of disagreement of the two houses over adjournment. The state has eleven boards of *ex officio* members and eleven other boards with some appointive members. The regents of the state university are elected. The judiciary department of the state comprises the supreme court consisting of three justices elected for six years; nine district courts, with ten judges elected by districts for four years; justices' courts in the townships and municipalities; and certain special municipal courts. In jury trials in civil cases a verdict may be rendered by a three-fourths vote.

County and township government must be uniform throughout the state. Each of the fifteen counties elects a board of county commissioners who work in coöperation with the usual officers—excepting the county superintendent of schools—whose duties may, in particular counties, be kept separate or combined as the legislature may prescribe.

The franchise is enjoyed only by the male citizens, resident in the state six months, but an amendment to the constitution providing for female suffrage was started in 1911 on its four-years' course to adoption or rejection. The short period of residence required for acquiring citizenship in the state has made Nevada the resort of persons seeking divorce upon any one of the six causes recognized by law, including desertion, habitual drunkenness, and cruelty.

Nominations for all elective public offices except those in school districts, irrigation districts, and certain municipalities, including party candidates for the office of United States senator, must be made by direct vote at primary elections or by nominating petitions. Provisions are also made for pledges relative to their votes for United States Senator by persons nominated for state senator or assemblymen (*see* Primary, Direct).

The public school system, as organized under a new code in 1911, is under the state board of education of three *ex officio* members with general direction, the superintendent of public instruction, deputy superintendents (who take the place of county superintendents) appointed for a term of four years, by the state board of education in each of five districts into which the state is divided, and the local boards. The revenues of the state school fund are derived chiefly from a federal land grant of 2,000,000 acres, certain fines, etc., and a state tax of ten cents on each $100 of valuation. The state university, normal school, school of mines, and agricultural college are combined in one institution located at Reno.

The political complexion of the state has varied widely. It was Republican, as a rule, up to 1876, Democratic in 1880, Populist or Silver Party from 1885 to 1895, and usually Democratic since the election of 1896. Its disproportionately large representation in Congress for so small a population, together with the predominance of its great mining interests, has caused Nevada sometimes to be called an American "pocket borough."

See Constitutions, State, Characteristics of; State Governments.

References: *Statutes of Nevada, for 1911* (Constitution, 487–524; School Law; Primary Law); C. H. Shinn, *The Story of the Mine* (1896); F. N. Thorpe, *Federal and State Constitutions* (1909), IV, 2391–2432.

Kendric C. Babcock.

NEW AMSTERDAM. The name of the Dutch settlement on Manhattan Island which, in 1652, was incorporated as a city. A Dutch trading post was established on Manhattan Island in 1613 but the first real settlement was made in 1623 by the colonists sent out by the West India Company. In 1626, Peter Minuit, director of the Colonies in New Netherlands, purchased Manhattan Island from the Indians for 60 guilders ($24) with a view to making it the principal settlement. The inhabitants were mainly employees of the West India Company and possessed no political rights. The charter of 1652 provided for a city government administered by a Schout appointed by the company, two Burgomasters and five Schepens to be elected. At that time the city had about 800 inhabitants. Burgher right was established in 1657. Only burghers and employees of the company could hold office or engage in commerce. The city was surrendered to an English fleet in 1664, its name was changed to New York and a new form of government established. In 1673 it was recaptured by the Dutch and the city government of New Amsterdam restored, but by the treaty of Westminster it was returned to the English in 1674. **See** NEW YORK CITY. **References:** E. H. Roberts, New York (1887), I; J. Fiske, *Dutch and Quaker Colonies* (1899), *Records of New Amsterdam* (1897).

E. H. G.

NEW BRUNSWICK. One of the three maritime provinces of Canada (*see*). It has an area of 27,985 square miles and its population at the last official census (1911) was 351,889, an increase of about 20,000 over that of a decade preceding.

New Brunswick, according to English claims, formed part of the French territory of Acadia which was ceded to the British Crown by the Treaty of Utrecht in 1713; but this claim was not admitted by the French Government and the title to the territory remained in dispute until it went definitely to England by the Treaty of Paris in 1763. After the Revolutionary War the province received a large influx of Loyalist settlers, and in 1784 it was separated from Nova Scotia, with which province it had been joined since 1763, and was given a representative system of its own.

The struggle for responsible government in the Canadian provinces may be said to have commenced in New Brunswick, although it took longer to reach a satisfactory culmination there than in the others (*see* RESPONSIBLE GOVERNMENT IN CANADA). Even before the close of the nineteenth century the appointive and elective branches of provincial government had come into conflict over appropriations, and during the years 1796–1799, no revenue bills were passed by the assembly. The constitutional struggle continued in one form or other until 1854, when the complete responsibility of the executive to the legislature was finally established. Meanwhile the province came into prominence during the diplomatic negotiations which ended in the Asburton Treaty of 1842. By the terms of this treaty New Brunswick was awarded about five thousand square miles of the whole territory in dispute.

New Brunswick was represented in the negotiations which led to the confederation of the Canadian provinces in 1867, and was one of the four original members of the new union. It is represented in the Dominion Parliament by ten senators and thirteen members of the house of commons. As a rule one or more of the federal ministers are chosen from among the members of this delegation. The provincial government consists of a lieutenant-governor, appointed for a five-year term by the governor-general of the Dominion; an executive council or ministry chosen by the lieutenant-governor but responsible to the assembly; and a single elective assembly of forty-six members, chosen from the legislative districts. The province originally had a legislative council of eighteen appointive members, but this body was abolished some years ago. The provincial capital, which is also the seat of the provincial university, is at Fredericton. **See** CANADA; CANADIAN, PROVINCES.

W. B. M.

NEW ENGLAND. The name New England was first applied to the coast northeast of New York by John Smith in 1614, and was formally adopted in the grant to the Council for New England in 1620. The New England Confederation of 1643 (*see*) included only four of the six little colonies then existing. An effort was made to create a colony of New England by Andros in 1688; since that time, the name has had no political meaning, but is popularly applied to the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut. In 1910, that region had a population of 6,554,681.

Topography.—New England is everywhere hilly except in comparatively narrow river bottoms; and in the north, contains numerous ranges of low mountains. A considerable part of New England is rocky and sterile, and parts of the surface are covered with lakes and bogs. With the exception of small openings (commonly called intervales) it was originally completely wooded. With the exception of the Kennebec, Penobscot and Connecticut, all the rivers are short and are interrupted near their mouths by falls around which have grown up such manufacturing cities as Waterville, Lowell, Holyoke and Lawrence. The coast, except for projecting spits of which Cape Cod is the most prominent, is rock-bound; and is provided with many land-locked harbors.

In addition to the sterile parts of the commonwealth, there is abundance of fertile soil which has always availed to support a large agricultural population; many of the so-called

abandoned farms are now worked profitably by foreigners. A great deal of tobacco is raised, also wheat, corn, oats and barley. Farming is diversified, and there is a large amount of dairying, though the raising of beef cattle for the market has almost gone by.

Industries.—In the beginning New England was a lumbering, ship building, ship sailing and fishing region. The four pursuits fitted together, for the first class ship timber grown on or near tidewater gave a great advantage to ship building, in which the farmers joined as their winter work; and from the same families came the sailors and sea captains. From the foundation of Plymouth in 1620 the inshore and banks fisheries have been a source of employment and profit. New England was one of the liveliest shipping regions of the world until the decline of the clipper ship, beginning with the opening of the Suez Canal in 1869. It was not until 1893, however, that the last American wooden sailing ship was launched.

In the embargo (*see*) days of 1808 some capital was turned to manufactures. The War of 1812 gave this tendency an additional advance; and after the tariff of 1816 a considerable part of the members of Congress from New England were for high tariffs on cotton and woolen goods. Textile manufacture has become the industry of the section, and has led to the growth of a distinctively manufacturing population.

New England has an old fashioned but serviceable transportation system with many branch lines, so that it is easy to build up a manufacturing town wherever conditions of water power or fuel supplies by sea are favorable.

Population.—The New England population to about 1840 was still of the English stock, then came foreigners, one wave after another, till in Massachusetts in 1900, 62 per cent of the population was foreign born or had a foreign born parentage; and in New England taken together the foreigners born were 2,984,159 or 53 per cent of the whole. Only about half of the present population is of the old English stock, which, nevertheless, furnishes a large part of the leadership in the professions and in business enterprises.

Characteristics.—The characteristic New England traits are held to be a strong sense of duty, great energy and persistence, and an interest in the intellectual and spiritual welfare of the community, along with an intense individuality and desire to do things in one's own way. The "missionary spirit" has always been intense. The energy of the people, and their devotion to their own section of the country are evidenced by the steady growth in wealth and in population, in the face of the allurements of the middle and western states. Thus Massachusetts, in the last fifty years, has increased by 173 per cent as against a growth in the whole country of 192 per cent. The wealth of the community has increased even faster and Brookline, a rich suburb of Boston, Providence and Hartford are reputed to have the highest average of property per capita to be found in the whole country.

Interest in the things of the mind is shown by the New England schools and colleges. Massachusetts was the first community in the new world to recognize the need of the education of every child. The Boston Latin School, essentially a high school, was founded in 1635, Harvard College in 1636. The first distinct theological school, the Harvard Divinity School, appeared in New England in 1781. That section divides with Pennsylvania the honor of establishing the first medical school. The first law school in the country was founded at Litchfield, Conn., in 1784. New England, with an area of only 66,424 square miles—less, altogether than the state of Missouri—contains 31 efficient colleges and technical schools which are attended by large numbers of youth from outside the limits of New England, and are to a considerable degree national institutions.

The moral interest of New England was shown first of all by the theocratic system of Massachusetts; then by the continuance of state-supported churches in Massachusetts till 1833; then by the variety of sects and denominations which have found a footing in New England. The Congregational church stands next to the Roman Catholic among religious denominations, and New England is also the stronghold of Unitarianism. There was always a mystical strain in the New England character to which is due the foundation by New Englanders of several large churches such as the Mormon church and the Christian Science denomination.

Government.—In government New England has furnished to the rest of the country the example of its town meeting (*see*) system, which, though advocated by Jefferson, has never been completely adopted anywhere else except to a limited degree in Michigan, and is now being steadily eliminated by the growth of cities. The town system has given a distinct character to the local government of New England which has been a school of practical politics. The New England state governments have, on the average, not been very different from those of the younger states. Rhode Island has been as much a pocket borough as Nevada. Farmers in New Hampshire have been no freer from money influences than the foreign voter in the cities. Still, the New England states have led the rest of the country in legislation for social betterment. The first prohibition law was passed in Maine in 1846, and was made effective in 1851 (*see* Dow, Neal).

Among the first insane hospitals are those of New England states. Massachusetts has

gone farther than any other state, except, perhaps, Wisconsin, in laws for the protection of workingmen. It was one of the earliest states to limit the hours of labor and has set up a variety of commissions for public services. Massachusetts was also one of the earliest states to control caucuses and political conventions by law.

New England has always had a large influence in the Federal Government, partly because it has taken more pains than some other sections to keep able men in office. Among its representatives and senators have been Blaine, Fry, Eugene Hale and Reed from Maine; John P. Hale and Daniel Webster from New Hampshire; Justin S. Morrill and George F. Edmunds from Vermont; Dawes, Crane, Hoar, Lodge, Edward Everett and Charles Sumner from Massachusetts; Aldrich from Rhode Island and Platt from Connecticut.

See MIDDLE STATES; PHYSICS AND POLITICS; PHYSIOGRAPHY OF NORTH AMERICA; SECTIONALISM IN AMERICAN GOVERNMENT.

References: N. S. Shaler, *The United States* (1894), I, ch. ii; J. G. Palfrey, *Hist. of New England* (1858–1890), I, 1–14; Justin Winsor, *Narrative and Critical Hist. of Am.* (1889), III, chs. vii–ix, V, ch. ii; list of sectional and state histories in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 37, bibliography in *ibid*, § 146.

ALBERT BUSHNELL HART.

NEW ENGLAND, BRITISH PROVINCE. As early as 1674–1675 the English Government formulated a plan for the establishment of a governor-general at the head of a royal province comprising all of the colonies in America to the north of the Delaware. In 1684 the charter of Massachusetts Bay was pronounced null; and, following the accession of James II in February, 1685, Joseph Dudley was commissioned provisionally as "president" of New England, with jurisdiction over Massachusetts Bay, New Hampshire, Maine, and the mainland of Rhode Island west of Narragansett Bay. June 3, 1686, the project of consolidation was advanced another step by the commissioning of Sir Edmund Andros as "governor-in-chief of the territory and dominion of New England." The authority of Andros was great and extended from the outset over Massachusetts, Plymouth, New Hampshire, and Maine; and, although they contrived to retain their charters, Rhode Island and Connecticut were brought under at least nominal control. April 17, 1788, New York and New Jersey, by royal order, were added. Upon the collapse of the Andros régime in April, 1689, consequent upon arrival of the news of the landing of William of Orange on the coast of England, the various colonies resumed provisionally their earlier governmental arrangements. See MASSACHUSETTS. **Reference:** C. McL. Andrews, *Colonial Self-Government* (1904). F. A. O.

NEW ENGLAND CONFEDERATION. See COLONIAL UNIONS BEFORE 1775.

NEW ENGLAND COUNCIL. The failure in 1608 of the Popham establishment on the Kennebec disinclined the Plymouth Company to further colonial enterprise. In March, 1619, Sir Ferdinando Gorges, the most energetic member of the corporation, led in a petition for a charter which should secure to the associates an effective monopoly of fishing privileges in northern waters. The Virginia Company protested, but November 3–13, 1620, the new charter passed the seals, and in June, 1621, Parliament ordered the instrument's delivery. The territory assigned to the forty patentees, henceforth to be known as New England, comprised all North America between the parallels 40° and 48°; and with it was conceded the fishing monopoly which Gorges had sought. The reorganized corporation was known as the Council for New England, and the powers of government conferred upon it were virtually identical with those conferred upon the London Company in its charters of 1609 and 1612. Ambitious plans were drawn up for the settlement of the New England coast, but the efforts of the Council met with meagre success. In 1635 the associates voluntarily surrendered their patent to the king. See MASSACHUSETTS. **Reference:** W. MacDonald, *Select Charters* (1899), 23–32. F. A. O.

NEW FRANCE. New France included the various territories claimed by the King of France in North America during the seventeenth and eighteenth centuries. Sometimes the term was used to comprise Canada, Acadia, and Louisiana; but more often it had reference only to the first of these, that is to say, the French settlements on the St. Lawrence and the Great Lakes. Taking it in this latter sense, the history of New France begins with the founding of Quebec by Champlain in 1608 although the voyages of Cartier and Roberval, more than a half-century previous, had given to the French a claim upon the St. Lawrence valley. The colony made little headway until 1627, when it was handed over to the care of a commercial organization, the Company of New France, more commonly called the Company of One Hundred Associates. This company, which was a protegé of Cardinal Richelieu, received not only the St. Lawrence valley, but all the other American territories claimed by France as a huge fief on nominal terms. But the company soon encountered troubles and in 1663, after its colonial commerce became unprofitable, it surrendered its territories to the Crown. New France thereupon became a royal province and continued to be administered as such until its conquest by England in 1759–60. The colony grew slowly but at the close of the French régime its population amounted to about 50,000.

The government of New France consisted of a governor-general appointed by the French Crown during pleasure, an intendant similarly appointed, and a sovereign (superior) council. This council, made up of the governor-general the intendant, bishop, and certain appointive members, was the chief legislative, administrative, and judicial authority of the colony. Certain special fields of jurisdiction were reserved to the governor-general, as, for example, the conduct of military operations. A few special powers pertained to the intendant, as, for example, the control of the workings of the land tenure system.

For administrative purposes New France was divided into three districts, those of Quebec, Three Rivers, and Montreal. Each district was in charge of a governor, who represented the authority of the governor-general, and a subdelegate who represented the intendant. Each district, moreover, had its local courts, from the decisions of which appeals might be carried to the sovereign (superior) council, and was divided into parishes which were, in the main ecclesiastical units but also served in an elementary way as areas of local government. The civil officer of the parish was a captain of the militia (*capitaine de la milice*), appointed by the governor-general. This official acted as the local representative of the higher civil authorities.

See CANADA.

References: F. X. Garneau, *Histoire du Canada* (1882–1883); Francis Parkman, *Complete Works* (in various editions), especially *The Old Régime in Canada;* J. Doutre and E. Lareau, *Histoire du Droit Civil Canadien* (1872); R. S. Weir, *The Administration of the Old Régime in Canada* (1897).

WILLIAM BENNETT MUNRO.

NEW HAMPSHIRE

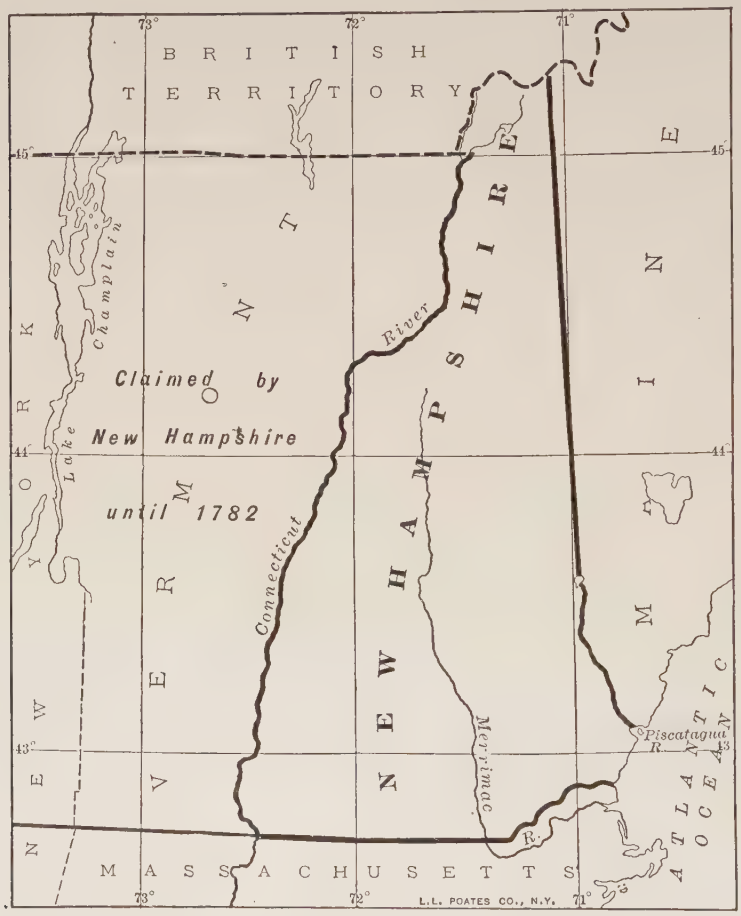
Boundaries and Settlement.—New Hampshire was so named in the Plymouth Company charter granting John Mason land between the Merrimac and Piscataqua (1629). The southeastern boundary and the western boundary were settled by royal authority, 1740, 1745; the northern boundary, 1842; and the southern boundary, 1901. Three groups of colonial settlements were made. (1) Along the Atlantic coast settlements were made between 1623 and 1638 resulting in the four coast towns: Dover and Portsmouth by settlers from England; Exeter by Puritan exiles from Massachusetts Bay; Hampton by settlers under Massachusetts authority. In 1641–3 the people in these towns passed by agreement under the Massachusetts jurisdiction, retaining their franchise "even though they bee not at present church members." They remained under Massachusetts government until New Hampshire became a royal province, 1679–80, and were reunited with Massachusetts, 1690–92. As New Hampshire had the same governor as Massachusetts, 1699–1741, the two colonies had either the same legislative or executive authority, 1641–1741, save for fourteen years. (2) The Merrimac valley was settled by Scotch-Irish (Londonderry, 1719) and Massachusetts colonists. (3) After the capture of Quebec the Connecticut valley was rapidly settled, largely from Connecticut. Nearly twice as many towns were chartered, 1760–1774, as in the previous 138 years.

History Since 1776.—January 5, 1776, a provincial congress established a "form of government" containing 900 words, the earliest state constitution adopted. All money bills had to "originate in the House of Representatives" of the "Congress"; neither branch was to adjourn for more than two days "without the consent of the other"; the "President" of the council was regularly elected chairman of the committee of safety and was the actual executive.

Most of the provisions of the permanent constitution of 1783 were taken nearly verbatim from the Massachusetts constitution of 1780; but there is some recurrence to state constitutions antedating Massachusetts. The four articles regarding military power follow *seriatim* the Maryland articles. The article on liberty of the press felicitously combines Massachusetts and South Carolina clauses. The opening clause "All men are born equally free and independent" follows Vermont and Pennsylvania. The statement of liberty of worship follows Pennsylvania. The principles later embodied in the first eight amendments to the national Constitution are included. The omission of any executive veto follows the example of the earlier state constitutions. The New Hampshire bill of rights was somewhat more tolerant, democratic, and revolutionary than that of Massachusetts. It added "no person of any one particular religious sect or denomination shall ever be compelled to pay towards the support of the teacher * * * * of another sect;" rejected the Massachusetts article requiring attendance upon and support of public worship; and in the oath of officers omitted any declaration of belief. From 1791, persons not supporting some other denomination were taxed "for support of the ministry and meeting houses" until 1819, when any person, "declaring he is not of the religious persuasion of the ministry settled in such town," was exempt. The right of revolution is emphasized by adding the Maryland condemnation of "the doctrine of non-resistance against arbitrary power." Part II required that the "President

of the State," senators, councilors, and representatives should possess freeholds and be "of the Protestant religion"; enfranchised adult male taxpayers, omitting the Massachusetts property qualification; provided for twelve senators, one representative for each town or group of towns with 150 polls, and one representative for each additional 300 polls, and a council of five chosen by joint ballot from two houses.

College of Agriculture and the Mechanic Arts, normal and industrial schools, school for feeble-minded children, and members of thirty-five other boards. The secretary of state and treasurer are elected by the Legislature. The senate has had twenty-four members since 1878. The House in 1911 had 393 representatives in a population of 430,572. Property qualifications for state offices were abolished, 1852, and religious qualifications, 1878. Adult male in-



BOUNDARIES OF THE STATE OF NEW HAMPSHIRE

Since 1793 the executive has been styled governor and possessed veto power, through an amendment taken *verbatim* from the Federal Constitution. Five councilors have been chosen, 1793–1829, by counties, by districts since 1829; their number has never changed, though the counties have increased from five to ten. There has never been a lieutenant governor. Since 1889 the president of the senate and speaker of the house have been authorized to replace the governor. The term of governor and "General Court" has been two years since 1878. The governor (salary $3000) and council appoint the attorney general, judges, superintendent of public instruction, trustees of the habitants paying taxes possessed the franchise, 1793–1903, when an educational qualification was added, and female suffrage rejected. In 1903 the legislature was empowered to tax franchises and inheritances, and legislate against "persons and associations" endeavoring to raise prices or "destroy free and fair competition."

Conservatism.—A striking conservatism has been shown in the unwillingness to modify the democratic constitution of 1783. The people have rejected 16 out of 23 proposals for constitutional conventions, and held only five since 1783 up to 1912, when in the sixth constitutional convention 12 amendments to the consti-

tution were proposed, and submitted to the people Nov. 5. Only four of them were adopted. Of all amendments proposed, about half have been accepted, a large proportion of these being verbal. The constitution remained "unparalleled among other states except Rhode Island and New Jersey, and has been in force 129 years, a longer time than the organic law of any other American commonwealth except Massachusetts." The strong self-governing spirit of a frontier colony is illustrated by the practically independent government of the four coast towns until 1641–3, and from 1689–90; by the resistance to the claims of Mason and the misgovernment of Cranfield; by the attempt of the Connecticut valley towns to form an "independent state" of "New Connecticut," 1777–1782; by the quick response of New Hampshire on the receipt of the news of Lexington, when 1200 men at once marched to Boston; and by the independent command granted John Stark enabling him to retain a force at Bennington against Schuyler's earlier orders. The insistance upon full local representation is illustrated by the special privileges of electing their own representatives granted to small towns that could not conveniently unite with others, 1783–1889; in 1851 and 1903 by the rejection of amendments decreasing the number of representatives. Since 1878 a town elects one representative if it has 600 inhabitants, and one for each additional 1200. A town of less than 600 sends one representative a proportionate part of the time. Local government has always been carried on through the town meeting.

Parties.—New Hampshire was the ninth and decisive state to adopt the Federal Constitution. At first Federalist (*see*), the state elected Gilman governor, 1794–1805, when he was succeeded for four years by Langdon, Republican; but Gilman was reëlected, 1813–1815, and Webster was chosen to Congress, 1813–1817. During the period of Republican (Democratic) control (*see* DEMOCRATIC-REPUBLICAN PARTY) the legislature so modified the charter of Dartmouth College as to replace it by a university under overseers appointed by governor and council (1816). The act was pronounced unconstitutional (*see* DARTMOUTH COLLEGE CASE). Until 1850, the state was, as a rule, Democratic under the leadership of Isaac Hill, Levi Woodbury and Franklin Pierce. Stephen S. Foster vainly preached abolition doctrines through harangues and pamphlets; Noyes Academy, established in Canaan for "all pupils without distinction of color," had its sponsors boycotted and its buildings removed by vote of town meeting, and its school broken up in 1835. In 1845, John P. Hale and Amos Tuck started a successful revolt against proslavery and Democratic control. An anti-slavery governor was elected, Tuck and Hale were sent to Congress, and Hale was twice reëlected Senator. Since 1856 New Hampshire has had a Republican governor (except 1871, 1874), and Republican congressmen with rare exceptions. In 1912, however, the electoral vote was for the Democratic presidential candidate while the legislature elected a Democratic governor.

Important Legislation.—The prohibitory law of 1855 was replaced (1903) by a local-option license law providing for a state board of license commissioners who may "in their discretion," even in places voting no license, issue licenses to innholders (for liquors to be drunk by non-resident guests), druggists, and railroad restaurant keepers (*see* LIQUOR LEGISLATION). A direct primary law (1909) provides that, save in local elections, "all candidates for elective offices shall be nominated by a primary or nomination papers," delegates to state conventions shall be elected at primaries; a voter shall vote on the ballot of the party for which he registered and if challenged shall "make oath that he affiliates with and generally supports the candidates of the party with which he offers to vote"; delegates and nominees of each party shall meet in convention to adopt platform and elect county committees. The progressive wing of the Republican party, supporting the primary and anti-pass laws, elected Robert P. Bass governor, 1910. Poulation in 1910 was 430,572.

See CONSTITUTIONS, STATE; STATE GOVERNMENTS.

References: *Provincial and State Papers*, Eds., Nathaniel Bouton, I–X, I. W. Hammond, XI–XVIIII, A. S. Batchellor, XXX, (1867–1910); A. S. Batchellor, *Laws of N. H. Province Period*, I (1904); J. F. Colby, *Manual of the Constitution* (1912); J. Belknap, *Hist. of New Hampshire* (1784–1792); F. B. Sanborn, *New Hampshire* (1904); C. Deane, in Mass. Hist. Soc., *Proceedings* (1876), 358–385; Bureau of Labor, *New Hempshire as a Summer Resort* (1905), *7th Report* (1907); W. M. and A. H. Chase, *Public Statutes of New Hampshire and Laws in Force* (1901)

HERBERT D. FOSTER.

NEW HAMPSHIRE GRANTS. New Hampshire's western boundary was declared by the King to be where "it meets our other governments" (1739, 1741). Governor Benning Wentworth granted 129 township charters west of the Connecticut, 1749–1764, when the King declared "the western banks of Connecticut River . . . the boundary line." Against New York's claim, the inhabitants of these grants secured a royal prohibition of disturbance of their titles (1767) and offered armed resistance. A convention of the grants declared "the inhabitants . . . in a state of nature . . . a free and independent state," called New Connecticut, later Vermont (1777). Sixteen towns east of the Connecticut river, feeling inadequately represented in New Hamp-

shire, joined Vermont. Nineteen towns on both sides the river, considering themselves denied equal rights, seceded from Vermont, and "united together," claiming "right to form an independent state" (1778). These four jurisdictions produced conflicting courts, sheriffs, and arrests, and threats of armed force. Under Washington's influence, Congress' compromise was accepted (1782). The eastern towns rejoined New Hampshire; Vermont's claim to the western towns was eventually recognized by New Hampshire and New York. **References:** J. Belknap, *New Hampshire* (1791), II, chs. xxii, xxvi, *Records of Governor and Council Vermont* (1873–4), I, II; J. L. Rice, "Dartmouth College and the State of New Conn." in *Connecticut Valley Hist. Soc., 1876–1881* (1881), 153–206; *New Hampshire State Papers,* X (1877), XXVI (1895). H. D. F.

NEW HAVEN. The Colony.—New Haven is the largest city in Connecticut. The first settlers came mainly from London in 1638. In 1639 they agreed on certain fundamental points of civil government; one, that the rules of Scripture were to be applied as the supreme authority; another, that church members only could be electors or officers. Other plantations were soon afterwards made along Long Island Sound which entered into a "combination" with New Haven under the name of the "Jurisdiction of New Haven." A series of "Fundamental Orders" were at the same time agreed on by the general court, stating a system of government. This much resembled that of Connecticut (*see*) except in confining suffrage and eligibility to office to church members. The charter obtained by Connecticut, however, in 1662 ignored the existence of New Haven, and its plantations became towns of Connecticut, except Southold which passed to New York.

The general assembly of Connecticut sat twice a year until 1818. From 1701 to 1818, one of these sessions was held at New Haven and one at Hartford. The constitution of 1818 made the sessions annual, and provided that they should alternate between the two cities. In 1875 Hartford was made the sole capital.

The City.—In 1784 the central portion of New Haven was incorporated as a city and made a free port for seven years. Originally the mayor was elected to hold office during the pleasure of the general assembly, and the general power of management was in a court of common council consisting of two branches, the aldermen and the common council. Towards the close of the nineteenth century this body was reduced to a single board of aldermen. Its executive functions had previously been largely reduced by the creation of various boards of police commissioners, public works, etc. The mayor has extensive powers of appointment and removal. Up to 1857 any by-law passed by the court of common council might be sent on a referendum to a city meeting, for approval or rejection.

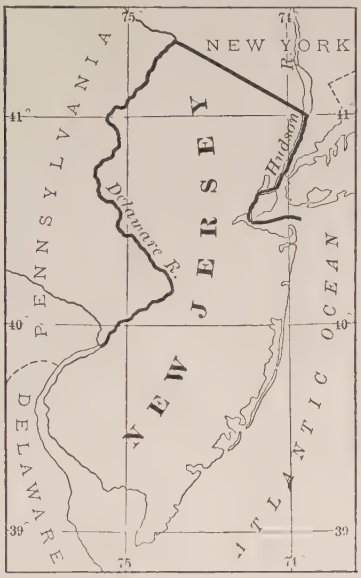
The city limits were extended so as to cover the whole town in 1895 but, as the constitution puts the admission of electors under the direction of the selectmen and town clerk in each town, it has been necessary to provide for the continuance of those offices and consequently of the corporate existence of the town. The population of the city when incorporated was a little over 3,000 and there were about half as many in the rest of the town. The town numbered about 7,000 in 1810; 133,605 in 1910. **References:** E. E. Atwater, *Hist. of the Colony of New Haven* (1881), *Hist. of the City of New Haven* (1887); C. H. Levermore, *The Republic of New Haven* (1886).

SIMEON E. BALDWIN.

NEW JERSEY

Early History.—The earliest European settlements in New Jersey were made by the Swedes and the Dutch in the northeastern part, and by the Swedes along the Delaware. In 1655 Peter Stuyvesant, director general of New Netherland, set up the Dutch authority over the Jersey region, and for nine years it was entirely controlled by the Dutch. In 1664, however, Charles II of England, disregarding the Dutch claim, gave the whole of New Netherland and the Jersey district to his brother, James, Duke of York, who later became James II. James immediately gave the district lying between the harbor of New York and the Delaware Bay to his friends, Lord Berkeley and Sir George Carteret and in honor of Carteret's recent gallant defense of the Island of Jersey in the English Channel the name New Jersey was given to the new province. In order to attract settlers, the new proprietors of New Jersey drew up and circulated a document known as the "Concessions," in which they promised religious liberty and a liberal government to all who would settle in their province. In the "Concessions" they promised that the colonists should be ruled by a governor to be commissioned by the proprietors, a council to be chosen by the governor, and an assembly to be chosen annually by the "freemen." Rebellions and discontent marked the history of New Jersey from the very first, and Lord Berkeley was soon glad to sell his share of the rebellious colony to two Quakers, John Fenwick and Edward Byllynge (1673–4). Very soon these two idealists were deep in disputes over the land titles of New Jersey, and the great Quaker, William Penn, was called to arbitrate the matter. Penn awarded nine-

tenths of the district concerned to Byllynge, and one-tenth to Fenwick. But the Byllynge nine-tenths was soon so deeply involved that (Feb. 10, 1674–75) it was handed over in trust to William Penn and two associates, to be disposed of for the benefit of Byllynge's creditors. Soon the one-tenth which Penn had assigned to Fenwick also came under the control of Penn and his two Quaker associates, and they then opened negotiations with Carteret which ended (July 1, 1676) in the conclusion of a deed defining the interests of Sir George Carteret, William Penn and his two associates, and Edward Byllynge. A line was established, ex-



BOUNDARIES OF THE STATE OF NEW JERSEY

tending from Little Egg Harbor to 41° 40′ north latitude and to the Delaware River. The land southwest of this line was confirmed to Penn and his associates, becoming known as West Jersey. The rest, under the name East Jersey, was awarded to Carteret; but in 1682 this also passed into the control of Penn and eleven associates. The twelve proprietors, now possessing the entire regions of East and West Jersey, at once associated with themselves twelve new proprietors, and on November 23, 1683, King Charles II. recognized them as the lawful proprietors of New Jersey.

In 1702 the proprietors surrendered the province into the hands of Queen Anne under whose direction the inhabitants of the Jerseys were subjected to the despotic rule of Sir Edward Hyde (Lord Cornbury), then governor of the province of New York. Until 1738 the Jerseys remained in a condition of semi-dependence on New York, retaining their separate legislature, but having the same governor as New York. In 1738, however, New Jersey was made a separate colony.

When the Revolution began, the provincial congress of New Jersey, acting upon the recommendation of Congress, on July 2, 1776, passed "a set of charter rights and the form of a constitution," now known as the constitution of 1776; and, December 18, 1787, the state unanimously adopted the Federal Constitution.

The First Constitution.—The constitution of 1776 vested the government of the state in a governor, annually chosen by joint ballot of the council and the assembly, with power to act as president of the council and having a casting vote; a legislative council, composed of one member from each county, annually chosen by the qualified voters of the county; and a General Assembly, composed of three members from each county, annually chosen by the qualified voters of the county.

The clause of the constitution regulating the suffrage is interesting, as it gave to the women of New Jersey the right to vote, a privilege which they actually exercised under this constitution. The clause making this possible reads as follows:

> IV. That all inhabitants of this Colony, of full age, who are worth fifty pounds proclamation money, clear estate in the same, and have resided within the County in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote for Representatives in Council and Assembly; and also for all other public officers, that shall be elected by the people of the County at large.

The constitution of 1776 remained operative until 1844 when the present constitution was adopted.

Present Constitution.—The present constitution of the state was ratified by a vote of the people on August 13, 1844, and its suffrage clause (Article II) was so worded as to put an end to woman's suffrage which had been permitted under the constitution of 1776. The suffrage clause of the constitution of 1844 originally established manhood suffrage for white males. It, however, added a proviso definitely excluding from the suffrage certain classes, such as soldiers and sailors garrisoned within the state, paupers, idiots, insane, convicted criminals, etc., and securing the suffrage to New Jersey citizens absent on military service for the state or the nation. The suffrage clause stood thus until September 7, 1875, when, reluctant assent having been given to the Fifteenth Amendment, it became necessary to omit the word white.

The anti-race-track conflict of 1891–1897 caused the people to make a second amendment to the state constitution (1897) forbidding the legalizing of lotteries or other forms of gambling. This amendment was ratified on September 28, 1897.

Legislature.—The constitution of 1844 provided for the division of the powers of government into three distinct departments—the legislative, executive, and judicial. The legislative branch of the government is composed of a senate and a general assembly. The senate

consists of one senator from each of the twenty-one counties in the state. Senators serve for three years, and thus about one-third of the second chamber is renewed each year. The general assembly is composed of representatives apportioned among the counties in proportion to population. Each county, however, whatever its population, is entitled to at least one representative and the total number of representatives is limited to sixty. Twenty-one years is the minimum age of an assemblyman, and he must have been a citizen and resident of the state two years, and of the county one year immediately preceding his election; the term of office is limited to one year.

Executive.—The chief executive, called the governor, is elected for a single term of three years, and the constitution expressly declares that in case he "shall accept any office under the United States or this State, his office of governor shall thereupon be vacant." He may not succeed himself as governor but may be reëlected after a full term has intervened. No one may serve as governor who has not attained the age of thirty years, been a citizen of the United States for at least twenty years, and of the state for at least seven years immediately preceding his election. The power of appointment of the New Jersey governor is great. Secretary of state; attorney-general; superintendent of public instruction; chancellor; chief justice; supreme court, circuit, inferior and district court judges; and judges of the court of errors and appeals are all subject to his appointment, by and with the advice and consent of the senate. These, with the minor officials who are generally appointees of the governors in our states, give the governor a vast amount of patronage and add greatly to his power.

Judiciary.—The courts have retained, perhaps more than those of any other state, the scheme of the English courts, from which our system was derived. Even the division into courts of law and courts of equity has been maintained. The court of chancery still stands as of equal dignity with the supreme court. At the pinnacle of the system stands the court of errors and appeals, consisting of the chancellor, the justices of the supreme court, and six judges, or a major part of them, which judges are appointed for six years. It enjoys appellate jurisdiction in all cases.

The other courts may be conveniently classified as follows:

I. Courts of Law.

(1) Supreme Court (civil jurisdiction).

(2) Circuit Court (civil jurisdiction).

(3) Common Pleas (civil jurisdiction).

(4) Quarter Sessions and Oyer and Terminer (criminal jurisdiction).

(5) District Courts (civil jurisdiction).

(6) Justice of Peace (with a very limited criminal jurisdiction).

II. Court of Equity.

(1) Chancery (equity jurisdiction).

III. Courts developed from the old ecclesiastical courts.

(1) Prerogative Court (appellate and original jurisdiction).

(2) Orphan's Court (probate jurisdiction).

(3) Surrogate (probate jurisdiction).

The judges of these various courts are appointed by the governor, with consent of the senate, for a term of five to seven years. The justices of the peace, however, are elected by the voters of the district. The governor, the chancellor, and six "lay" judges of the court of errors and appeals constitute the court of pardons. A majority (provided it contains the governor) may grant pardons, commute sentences, remit fines, allow convicts to remain at large, etc. The laws of New Jersey have never been reduced to a code.

Local Government.—The local subdivisions of the state are counties, cities, townships, towns, and boroughs. Towns are administered through a council, clerk, collector, assessor, treasurer, etc., chosen by popular vote. The township is managed by an annual town meeting which elects administrative officers. But any township with over 5,000 inhabitants may be incorporated as a town with a mayor and council.

Party Affiliations.—In national political affiliations New Jersey has had a varied history. From 1789 to 1800 inclusive the Federalists were in control, and from 1804 to 1808 inclusive the Jeffersonian Republicans were in control. In 1812 the Federalists by a shrewd political trick succeeded in choosing the presidential electors. From 1816 to 1824 New Jersey, like nearly all of the other states, was Republican and in 1828 cast her electoral vote for John Quincy Adams. From that time to 1852 the state was Whig in national elections except in 1832. In 1852 and 1856 it was again Democratic and in 1860 divided its votes between Lincoln and Douglas, giving the former four and the latter three votes. Beginning with 1864 the state was Democratic until 1896 with the exception of 1872 when it was Republican. From 1896 up to 1912 the state had been Republican; but in 1912 gave its fourteen votes to the Democratic candidate. In the elections to state offices the Republicans were on the whole successful from 1895 until the election of 1910 when Woodrow Wilson was given a Democratic plurality of 49,000.

Recent Important Legislation.—During Governor Wilson's administration a number of very important bills were passed. Of these the most important are: (1) the Geran Bill for regulating elections; (2) the Employers' Liability Act or Workman's Compensation Law; (3) the Corrupt Practices Act (4) the Public Utilities Bill which gave to the commissioners of public utilities rate-making power and made the directors of corporations liable to impris-

onment in cases of violation of regulations. The law expressly provided that no increase of rates shall take effect until the Public Utilities Commission has determined that they are reasonable and just; (5) The Walsh Commission Act which provides that any city or town in the state may adopt the commission form of government on a vote of thirty per cent of those who vote at the last previous election. The bill also provides for the institution of the initiative, referendum and recall.

J. W. Barker and H. Howe, *Historical Collections of the State of New Jersey* (1847).

ROBERT MCNUTT MCELROY.

NEW MEXICO. The present state of New Mexico is a part of that vast territory to which that name was given by Spain in 1551, and which continued under Spanish or Mexican rule until ceded to the United States by the treaties of 1848 and 1853 with Mexico (*see* ANNEXATIONS TO UNITED STATES). The Span-

BOUNDARIES OF THE TERRITORY AND STATE OF NEW MEXICO, SHOWING TERRITORIAL CHANGES

Population.—In 1790 the population of New Jersey was 184,139; in 1850, 489,555; in 1900, 1,833,699; in 1910, 2,537,167.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE EXECUTIVE; STATE GOVERNMENTS, CHARACTERISTICS OF; STATE GOVERNMENTS DURING THE REVOLUTION; STATE JUDICIARY; STATE LEGISLATURE.

References: F. B. Lee, *New Jersey as a Colony and as a State* (1902); T. F. Fitzgerald, *Legislative Manual of New Jersey* (published annually by authority of the Legislature); W. M. Clevenger, and E. Q. Keasbey, *The Courts of New Jersey: their Origin, Composition, and Jurisdiction* (1903); F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2533–2614; J. O. Raum, *The Hist. of New Jersey* (1877); E. B. O'Callaghan, *Hist. of New Netherland* (1846), of great value for the period of Dutch control; E. P. Tanner, *The Province of New Jersey* (1908), covers the period from 1664 to 1738; W. Nelson, *The New Jersey Coast in Three Centuries* (1902);

ish influence upon its government has, however, been slight in the American period. It was given territorial organization in 1851 and admitted as a state in 1912 under the Enabling Act of 1910. The population increased from 195,310 in 1900 to 327,301 in 1910. The area is 172,580 square miles.

The constitution of New Mexico, framed in 1911, and approved by popular vote, creates a government with legislation, executive, and judicial departments, and provides for a state referendum (*see*) but not for the initiative (*see*). Petitions for a referendum must be signed by not less than 10 per cent of the electors in each of three-fourths of the counties, and in the aggregate at least 10 per cent of the total of electors in the state. The senate consists of 24 members elected for four years; the house of representatives, of 49 members elected for two years. Senators and representatives are paid five dollars a day with mileage.

The executive department consists of the governor, lieutenant-governor, and six adminis-

trative officers, elected for four years, exercising the usual powers, and ineligible, except the superintendent of public instruction and the commissioner of public lands, to succeed themselves.

The judicial power is vested in a supreme court of three justices, elected for eight years, receiving $6,000 salary; eight district courts, each with one judge elected for six years; a probate court in each county; and justices of the peace, police magistrates, and constables for the localities.

The franchise is confined to males citizens resident in the state one year, except that women may vote in school elections unless such privilege is suspended in any district by petition of a majority of the qualified electors. In certain county and municipal elections to decide questions relating to the creation of a debt, only electors who have paid a property tax within the preceding year may vote. Strict provisions are made against interference with the franchise or political rights of citizens "on account of religion . . . or inability to speak, read, or write the English or Spanish languages."

The taxing power of the state extends to practically every form of taxation, but the rate on all subjects of taxation must be uniform. A state board of equalization determines the valuation of the properties of transportation and transmission companies. A state corporation commission of three members has comprehensive powers over granting charters of incorporation, and over the regulation, rates, and services of transportation and transmission companies operating within the state.

The usual county officers are provided in the counties, with terms of four years and ineligibility, except for the probate judge and the county clerk, to succeed themselves. All receive salaries and no fees.

A free public school system is provided for and placed under the direction of the state board of education consisting of the governor, superintendent, and five appointed members. Sections 2, 16, 32, and 36 are set aside to provide a public school fund. A minimum school term of five months, and compulsory attendance are prescribed. Discrimination against children of Spanish descent and their classification in separate schools are expressly forbidden. The state maintains seven higher educational institutions, and six other public institutions, each with its separate board of regents of five members, appointed for four years.

For the first twenty years of the new state, all laws passed shall be printed in both English and Spanish, and thereafter as the legislature shall direct.

As a territory, New Mexico was more or less exploited both politically and economically by men trained in the Pennsylvania system, and the Republicans usually elected territorial officers including the delegate in Congress. The first governor elected under the constitution was a Democrat who won by a plurality of 2,819, along with a majority of the Democratic state ticket and one of the two representatives in Congress, thus giving New Mexico its first Democratic representative at Washington since 1904. In 1912 the Democrats carried the state in both the presidential and gubernatorial elections.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; CONSTITUTIONS, STATE, LIMITATIONS IN; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2615–2622; H. H. Bancroft, Hist. of Arizona and New Mexico," being Vol. XVII of his *Works* (1889); *Constitution of New Mexico, 1911.*

KENDRIC C. BABCOCK.

NEW NATIONALISM. A platform of political principles expounded by Theodore Roosevelt (*see*) first in a speech at Ossawatomie, Kansas, August 31, 1910, and later, 1911, explained at length in a series of articles in the *Outlook.* A doctrine of extreme nationalistic interpretation of the Constitution was expounded which would limit state legislation strictly to local issues; remove "the impotence which springs from the over division of government powers"; eliminate the "twilight zone," *i. e.,* the field in which jurisdiction is denied both state and national government and "which serves as a refuge for lawbreakers"; permit the general government to act in all cases where the general good demands it, especially in the interest of human rights in contradistinction to property rights; and regard the "executive power as the steward of the public welfare." The platform consisted of seventeen planks. Seven referred to corporations. Effective publicity of corporate affairs, government supervision of the capitalization of all corporations doing an interstate business, federal supervision of trusts controlling necessities of life, were among the demands. An expert tariff commission, graduated income and inheritance taxes, and a scientific revision of the currency system, were the financial measures advocated. A sufficient army and navy should be maintained to demand international respect. National resources should be conserved and the interests of agricultural life should be advanced. The terms and conditions of labor should be regulated in the interest of the public, mob violence should be suppressed, and all neutral grounds between the jurisdiction of the state and the nation should be eliminated. And finally the direct primary should be generally established with a corrupt practices act and the recall for elective officers. See PROGRESSIVE PARTY.

O. C. H.

NEW NETHERLAND. The Dutch colony of New Netherland was a proprietary possession

of the Dutch West India Company to which by a charter, granted in 1621 by the states general of the Netherlands, control and government of the colony were given, subject to a limited oversight by the states general. The company consisted of five chambers of which the Amsterdam chamber, the most important, assumed the immediate management of the colony. The general control of the company was vested in the council of nineteen, eighteen of whom were elected by the five chambers and one by the states general. Ultimate control, especially in political affairs, was vested in the states general by which the director of the colony, appointed by the company, was commissioned and to which all officers took an oath of allegiance. The director, assisted by a small council which he controlled, virtually exercised absolute authority in the colony. He was generally supported by the company in his denial to the people of any real share in the government. Subordinate to the director were the other officers of the colony. The law in force in the colony was first, the resolutions of the West India Company, failing these, Roman law, the imperial statutes of Charles V, and the laws and customs of the Netherlands. The company in 1629, by a "charter of Freedoms and Exemptions" established a system of large feudal jurisdictions, called patroonships. The Dutch Reformed Church was the established church but freedom of conscience was allowed and religious persecution was almost unknown. In 1753 the City of New Amsterdam was chartered (*see* NEW YORK CITY). Limited rights of self-government were allowed to the towns. The colony was captured by the English in 1664. See NEW YORK. References: H. L. Osgood, *The Am. Colonies in the 17th Century* (1904), II, 95–118; C. Z. Lincoln, *Constitutional Hist. of New York* (1906), J. R. Broadhead, *Hist. of State of New York* (1855–1871). M. S. B.

NEW ROOF. A nickname of the Constitution of the United States applied to it about the time of its adoption. O. C. H.

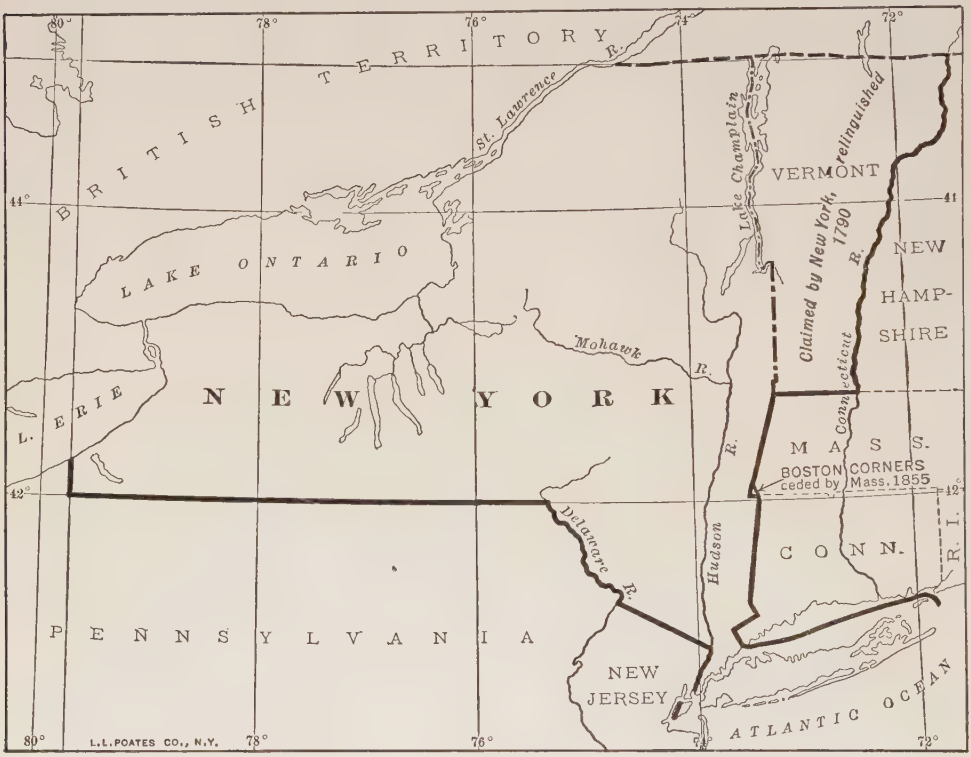
NEW SWEDEN. New Sweden was the name given to the territory on the Delaware settled by the Swedes in 1638. The projector of this movement was William Usselinx who laid a plan before Gustavus Adolphus for a commercial company, similar to the Dutch West India Company. He urged the advantages of trade and commerce and the enlargement of the empire. A charter of privileges was signed by the King, June 6, 1626, establishing a trading company with power to make settlements. The project advanced slowly however, and it was not until 1638 that an expedition of about fifty colonists finally set out under Peter Minuit. They settled on the Delaware, purchased of the Indians lands claimed by the Dutch, built a fort near the present site of Wilmington and called it Christina. Between 1638 and 1656, twelve expeditions were dispatched to New Sweden, but the colony remained a feeble one. The governors were given extensive powers in justice and government, but there was really little need of laws and taxation for these few people living a simple frontier life. The Swedes were at a great disadvantage by being thrown into contact with the more populous Dutch and English colonies, who claimed their land and interfered with their development. In 1655, the Dutch seized their settlements and forts with little or no opposition. Though the hopes of Sweden were not realized in the development of her empire or in the enlargement of her trade and commerce, yet these industrious, religious, and honest people played their part well in establishing the beginnings of the civilization later carried out by Penn and his followers in Pennsylvania, Delaware, and New Jersey. See DELAWARE; PENNSYLVANIA. References: A. Johnson, *Swedish Settlements on the Delaware, 1638–1664* (1911); J. Winsor, (1884), IV, 443–502; E. Channing, *Hist. of the U. S.*, II (1908). M. W. J.

NEW TENOR BILLS. This term was applied to certain emissions of paper money, in Massachusetts during the colonial period, issued to take up older emissions which had greatly depreciated in value. The older issues which circulated for a time along with the new issues were known as "old tenor" and "middle tenor" bills. See PAPER MONEY IN THE UNITED STATES. D. R. D.

NEW YORK

New Netherland.—The settlement of New Netherland (*see*) followed the discovery of the Hudson river by Henry Hudson in 1609 and the immediately subsequent voyages of Dutch traders. A charter was given to the United New Netherland Company in 1614, granting exclusive trade rights in the newly discovered regions. This charter expired in 1618 and the control and government of the entire region was vested in a new corporation chartered in 1621, the Dutch West India Company, which governed New Netherland until its capture by the English in 1664. Little Dutch influence can be traced in the development of the provincial institutions of the English colony of New York. Local institutions and still more social customs retained a larger admixture of Dutch elements.

The Province of New York.—Charles II gave the colony to his brother James, Duke of York, as a proprietary province by the patent of March 12, 1664. The Duke of York as proprietor was granted free powers of government provided, "that the laws and government be not contrary to but as nearly as possible in accordance with those of England." The right of appeal to the Crown was reserved. The accession of James to the throne of England in 1685 transformed the colony of New York from a proprietary (*see* PROPRIETARY COLONY) into a royal province. In 1683, Governor Dongan called the first legislative assembly of New York. Its acts were subject to the governor's veto and to the proprietor's disallowance. This assembly, after meeting for two sessions was dissolved in 1685. A second assembly, elected in the same year, had a brief existence, being dissolved in 1687. After the Revolution of 1688 William III restored the general assembly, and thereafter the government of the province was vested, under the Crown, in governor, council and assembly. Royal commissions and instructions constituted the fundamental law. English common law was adopted as the common law of New York and the church of England was the established church.



BOUNDARIES OF THE STATE OF NEW YORK, SHOWING TERRITORIAL CHANGES

New York in the Revolution.—The last provincial assembly expired by time limitation on April 17, 1776, and the work of revolutionary government was taken over by provincial congresses, the first of which was called by a committee of citizens and each succeeding congress by the one preceding. The fourth provincial congress was elected for the express purpose of deciding what action New York would take in answer to the resolution of the continental congress (*see*) of May 10, 1776, advising the colonies to frame suitable governments for themselves. This congress met at White Plains, July 8, 1776, and on the 9th, ratified the Declaration of Independence (*see*). The next day a resolution was adopted changing the name of the body from "Provincial Congress" to "Convention of the Representatives of the State of New York." This body assumed the work of governing the portions of the state not under British control and, in addition, the functions of a constitutional convention (*see*), adopting on the 20th of April, 1777, the first constitution of the state of New York. This constitution remained the fundamental law of the state, with the addition of five amendments in 1801, until 1821. Its noteworthy features were: a council of revision, consisting of governor, chancellor, and judges of the supreme court, which possessed the veto power; a council of appointment, consisting of four senators elected by the assembly, with the governor as president, by which nearly all state officers and judges were appointed; and a

court of impeachment and errors, composed of the entire senate with the chancellor and supreme court judges present as advisory but not as voting members. New York adopted the Articles of Confederation (*see*) February 6, 1778, and was the eleventh state to ratify the Federal Constitution, July 26, 1788.

Constitutions of 1821 and 1846.—The Constitution of 1821 was framed by a constitutional convention and, the first constitution of New York to require popular ratification, was adopted by the electors. The franchise was broadened, the council of revision was abolished and the veto power was vested in the governor. The council of appointment disappeared and its powers were given to the governor, senate and legislature. The constitution of 1777 contained no provision for its own amendment. That of 1821 gave to the legislature by action in two successive legislatures the right to initiate amendments and required ratification by popular vote. The most important amendments adopted between 1821 and 1846 were that of 1826 establishing white manhood suffrage and that of 1845 abrogating all property qualifications for office-holding. This democratization of the state government was carried still farther in the constitution of 1846. All important offices, including the judicial, were made elective; the tenure of office of the highest judges was reduced to eight years; the ancient court of chancery was abolished; and a court of appeals was created. Largely as a result of the famous rent war all feudal tenures were abolished and allodial tenure of all land was decreed. Constitutional limitations were imposed upon the powers of the legislature in financial matters, in special legislation and in chartering corporations. The people once every twenty years, were allowed to decide whether a convention to revise the constitution should be elected. From 1846 to 1894 there was no general revision of the constitution, although one was rejected in 1867 and many amendments were adopted.

Constitution of 1894. Legislature.—The present constitution of New York was framed in 1894 and ratified by popular vote. The legislature possesses all the legislative and corporate powers of the state which have not been withdrawn by positive provisions of the state constitution. It consists of a senate of fifty-one members, elected for two years and an assembly of one hundred and fifty, elected for one year by the voters in single districts, apportioned each decennial approximately in proportion to population. A senate district may include more than one county or may be a part of one county but cannot include parts of two or more counties. Up-state fear of the domination by New York City is evidenced by the provision that no one county shall have more than one-third nor any two adjoining counties more than one-half of the entire number of senators, however large their population. New York and Kings counties which are entirely included within the city of New York have about one-half of the entire population of the state but return, under the present apportionment, only about two-fifths of the members of the senate. Certain officers are ineligible for election to the legislature and members cannot be chosen to any office by the governor, governor and senate, legislature, or any city government during the period for which they have been elected. Each member receives a salary of $1500 and is allowed mileage. Each house organizes itself and judges of the qualifications and election of its own members and adopts with certain constitutional exceptions its own rules of procedure. The lieutenant-governor is the regular presiding officer of the senate, with a casting vote only. A president pro tempore is elected by the senate. The speaker of the assembly is the recognized leader of the majority party of that house. The standing committee system (*see*) is in full vogue in both houses, members being appointed by the president pro tempore in the senate and by the speaker in the assembly. The legislature meets regularly on the first Wednesday of January. Special sessions may be called by the governor at which only the business recommended by him can be transacted. A majority constitutes a quorum in each house for ordinary legislation.

The passage of financial measures requires the presence of three-fifths of all the members elected to each house. Bills may originate in either house and no bill can become a law without the assent of a majority of the members elected to each house. The assent of two-thirds of all the members of each house is required to pass bills voting money or property for private or local uses. To insure the publicity of proposed legislation and to prevent "railroading," each bill must have been printed and distributed to members at least three legislative days before its final passage and no amendment is allowed on the last reading. The governor can dispense with the three days rule by certifying to the necessity for immediate passage of the measure. All bills are subject to the governor's veto which can be overridden by a two-thirds vote of both branches of the legislature.

Two valuable practical reforms of recent years tend to prevent bad even if they do not assure wise legislation, *viz.:* the governor's power to veto items of appropriation bills and the constitutional enactment allowing him thirty days after the final adjournment of the legislature for the consideration of bills awaiting his action. Full responsibility for bad legislation is thus placed squarely upon the governor. Moreover the probability that he will veto bad measures and unnecessary or vicious items of appropriation bills deters the legislature from passing many bills which could not endure the light of publicity and investigation.

Numerous restrictions are placed upon the power of the legislature to pass local or private bills, a class of measures whose consideration and passage engross the time of members and furnish the most prolific source of log-rolling (*see*) and the most frequent opportunities for dishonest gains. A high degree of legislative centralization characterizes the government of New York, for so slight are the legislative powers allowed to local councils or boards that the state legislature is practically also the local legislative body for each county, city, town and village.

Executive.—In striking contrast to this legislative centralization stands a double executive decentralization. The governor is only one, although the most important of a number of principal state officers, each of whom is elected by the people and conducts his department at his own discretion, subject only to removal for misconduct or malversation in office. Moreover nearly all local executive or administrative officers are elected or locally appointed, and while agents of the state for the local administration of state law, are not responsible to Albany, save that certain officers are removable by the governor for cause shown. The governor, who must be thirty years of age, a citizen and a resident of the state for the preceding five years, is elected biennially and receives a salary of $10,000 and an official residence. In case of vacancy in the office of governor, the lieutenant-governor, president of the senate and speaker of the assembly succeed to the office in the order named. The customary powers of a state executive are vested in the governor. His power of appointment, usually with the advice and consent of the senate, is larger than that of many American governors, while his power of removal is very small save for misconduct in office. Governors have strongly urged the adoption of a constitutional amendment vesting in the governor the power of appointing the principal officers of state, claiming that greater administrative efficiency would result and that not otherwise can the executive fulfil the constitutional requirement that he "shall take care that the laws are faithfully executed." Growing popular confidence in the executive at the expense of the legislature, a marked contemporary tendency throughout the United States, is particularly manifest in New York (*see* CENTRALIZATION, GROWTH OF, IN UNITED STATES). The governor is regarded as representative of the whole state and a better exponent and protector of its interests than the legislature. Through messages and public speeches he is able to instruct and formulate public opinion upon pending legislation and thus exert influence upon the legislature (*see* GOVERNOR).

Judiciary.—The highest court of the state is the court of appeals, consisting of a chief justice and six associate justices, elected on a general ticket, for terms of fourteen years. The governor, upon the request of the court, may designate no more than four supreme court justices as additional members. Five justices constitute a quorum, the concurrence of four is necessary for a decision and not more than seven may sit in any case. The court has appellate jurisdiction only, and is limited to questions of law savé in capital cases. The chief justice receives a salary of $14,200, and the associates $13,700. There is an appellate division of the supreme court in each of the four judicial departments of the state, consisting of five or seven justices of the supreme court designated for such service for terms of five years by the governor. The supreme court has highest original jurisdiction in law and equity in both civil and criminal cases. Ninety-seven judges are elected in the nine judicial districts of the state for terms of fourteen years. Unforeseen vacancies are filled until the next general election by the governor with the advice and consent of the senate. Salaries vary in the different districts, ranging from $7,200 to $17,500. County judges, normally one for each county, are elected for terms of six years. In counties of less than 40,000 inhabitants, the county judge is also surrogate. Larger counties have a surrogate elected for six years, while New York county has two with fourteen year terms. The age limit for all judges is seventy years. Justices of the peace elected by town meetings for four years exercise petty civil and criminal jurisdiction, assisted in certain cases by a justice's jury of six men. Cities have a special organization of local courts differing according to population and local conditions.

Removal from Office.—Judges or other state officers may be impeached by the assembly and tried by the senate and judges of the court of appeals sitting together as a court. Judicial officers, according to their rank, may also be removed by a two-thirds vote of both houses of the legislature, by a two-thirds vote of the senate upon recommendation by the governor and by a suit at law in the proper court.

Elections.—Every male citizen, twenty-one years of age, who has been a citizen for ninety days, an inhabitant of the state for one year, a resident of the county for four months and of the election district for thirty days is entitled to vote for all officers. Registration of voters prior to election is required and election returns are canvassed by bipartisan election boards. A long and vigorous campaign for direct primary elections has resulted in the enactment (1911) of a direct-nomination law, which, although containing some features favorable to party bosses, adopts the principle of the direct primary (*see* PRIMARY, DIRECT) and applies it to the nomination of candidates for local public office and to the election of officers of party organizations.

Education.—The educational activities of the state are controlled by the University of the

State of New York, an administrative and examining body, whose governing council is a board of regents, elected by the legislature, and whose executive officer is a commissioner of education, chosen by the regents. The regents can grant and revoke charters of educational institutions, establish standards for professional education, supervise the educational work in normal, secondary and primary schools and conduct examinations. Urban districts have a large degree of autonomy in school administration. County communities are grouped into rural districts under a district superintendent of schools, locally appointed, but subject to supervision and removal by the state commissioner (*see* EDUCATION; UNIVERSITIES).

Increased State Activity.—A remarkable governmental development of recent years has been the increase of state functions, partly at the expense of local control. State highway construction on an extensive scale has been undertaken; administrative supervision of banks, trust companies and insurance companies has been made more effective; canal reconstruction, at a cost of over $100,000,000, is under way; and most significant of all, two public service commissions were created in 1907, one for New York City and one for the remainder of the state, with extraordinary regulative, administrative and quasi-judicial power over common carriers, gas and electric corporations, and, in the second district (1910), over telegraph and telephone companies as well.

Revenue.—The state derives its revenue largely from indirect taxation. Its principal sources of income are liquor license, corporation franchise, inheritance, stock transfer, mortgage recording and secured debt recording taxes and a small direct tax. With the exception of this last tax the general property tax is reserved to the counties and local governments.

Local Government.—Counties in New York are governed by boards of supervisors (*see*) elected in towns (*see*) and city wards and by county officers elected on a general ticket. The board of supervisors has a large degree of control of town as well as of county affairs and the supervisor is also the chief officer of the town government. The town is distinctly subordinate to the county and is governed by a town meeting and by town officers, elected for two years. A village (*see*) is an incorporated urban community, too small for regular city organization, which remains a part of the town but has an autonomous government in local affairs under a village president and trustees.

Parties.—New York is usually a doubtful and often, with its forty-five electoral votes, a pivotal, state in national politics. Large Democratic majorities in New York City under the leadership of Tammany Hall (*see*) are offset by corresponding up-state Republican majorities. Fear of Tammany domination in state affairs does much to keep the rural voter in the Republican ranks while violation of the principle of home rule respecting New York City, by the up-state Republican legislator, is a valuable asset of the Democratic party in New York City. The Republican party controlled the state from 1895 to 1910, inclusive; but in 1910 the Democratic party, obtained power both in the executive and legislative departments, which was further established in the election of 1912, but in 1913 a Republican assembly was elected. Third parties have occasionally played an influential part in state elections but none has retained an important position long.

Area and Population.—New York has an area of 49,170 square miles. Its population, in 1790, was 340,120, in 1850, 3,097,394, and in 1910, 9,113,279.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE EXECUTIVE; STATE GOVERNMENTS, CHARACTERISTICS OF; STATE JUDICIARY; STATE LEGISLATURE.

References: C. Z. Lincoln, *Constitutional Hist. of New York* (1906); De A. S. Alexander, *A Political Hist. of the State of New York* (1909); E. H. Roberts, *New York* (1887); T. Roosevelt, *New York* (1891); F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2623–2739. MARSHALL S. BROWN.

NEW YORK CITY

Location, Area and Growth.—New York is by far the largest city of the American continent and the second largest city of the world. Because of its location and area and the number, character and distribution of its population, the city presents a unique and stupendous problem in American municipal government.

New York is situated at the mouth of the Hudson River, upon a harbor offering facilities for shipping which are unrivalled upon the eastern coast. The connection of this harbor with Long Island Sound by the East River and with the Great Lakes by the Hudson River and Erie Canal, which was opened in 1825, as well as the opportunities which its shores offer for railroad terminals, has contributed largely to the growth of the city's commerce and industry. It covers an area of 287 square miles, including Manhattan Island and the small islands off its shore, 40 square miles of the mainland adjoining to the north, the entire western end of Long Island, including 175 square miles, and Staten Island on the west side of the harbor, 48 square miles.

BOUNDARIES OF THE CITY OF NEW YORK, SHOWING TERRITORIAL CHANGES

Until 1873 the city of New York was confined to Manhattan Island and the adjacent islands in the East River and New York Harbor. Additions northward in that year and in 1895 brought in the territory which makes up the present Borough of the Bronx. In 1896 the act was passed which created the Greater City of New York, comprising the whole of the old city and county of New York, the whole of Brooklyn or Kings county, Staten Island or Richmond county, and Long Island City, the towns of Newtown and Flushing and part of the town of Hempstead, which became the new Queens county. The charter of the greater city took effect on January 1, 1898, and no extensions have been made since that date (1913). The city, therefore, comprises the whole of four counties, New York, Kings, Queens and Richmond and is divided for purposes of local government into five boroughs, Manhattan, Bronx, Brooklyn, Queens and Richmond.

Population.—The total population of New York City by the federal census of 1910 was 4,766,883. Although one of the most striking features of the city is the extreme congestion of its population, the additions made to its territory when the greater city was formed brought in a large area of which the population remains today rural in character. Staten Island, with its 48 square miles of territory, contains a population of 85,969, or 1,791 to the square mile, while Manhattan, with only 22 square miles of territory, has a population of 2,331,542, or 105,979 to the square mile. About three-fourths of the entire population of the city live in tenements.

New York City contains more than half the inhabitants of the state. The population of the area now included within the city is more than 96 times its population in 1790, while that of the state is but 26 times and that of the United States only 23 times their popula-

tion in 1790. The increase in population of the city during the decade 1900–1910 was 38.7 per cent, compared with an increase of 25.4 in the state and 21 per cent in the United States.

The increase in population of the area covered by Greater New York is as follows: 1790, 49,401; 1820, 152,056; 1850, 696,115; 1880, 1,911,698; 1910, 4,766,883.

New York is distinctly a city with a white population and is comparatively free from the negro problem. But two per cent of its population are negroes or Asiatics. On the other hand, over 40 per cent of its inhabitants are foreign born and 78.6 per cent are either foreign born or of foreign-born parentage.

Of the 1,927,720 foreign born white inhabitants of New York, the countries that furnished over 100,000 were: Russia, 485,659; Italy, 340,406; Germany, 279,233; Austria-Hungary, 265,608; Ireland, 252,519; England, Scotland and Wales, 105,983.

Banking, Commerce and Industry.—New York City is the clearing house of the United States, the center of the banking interests and the money power. Commercially, it ranks far ahead of any other city of the country and it is by far the largest port of entry and of export trade. The imports for the year ended December 31, 1912, amounted to over $1,068,162,387, and the exports both foreign and domestic to over $866,346,175. All of the largest railroad systems from the west have terminals in New York and most of the great trans-Atlantic lines converge there. The number of industrial establishments conducted under the factory system was, in 1909, 25,983, representing a capitalization of $1,364,353,000 and employing 97,453 salaried officers and clerks and 554,002 wage-earners.

Social Conditions.—Every condition of life, from the extravagance and luxury of great wealth to the extremes of poverty and industrial dependence, is represented in the city. In physical well-being and morality, however, its inhabitants rank well with those of the other great cities of the world. Its schools, colleges, evening lectures, free libraries, museums and public concerts offer good opportunities, well distributed, to all classes for intellectual development and both the city government and its private citizens are generous of their wealth in providing for the physical and social welfare of the inhabitants. The cost of living is high for all classes and great temptations are offered for the extravagant use of leisure.

Cost of Government.—The government of the city has been characterized in the past by extravagance, waste and corruption, largely as a result of which New York was saddled with a net funded debt, at the end of 1912, of $827,910,800. Its total assessed valuation of real property amounted at the same date, to $7,861,898,890, and the city is hard put to it within the constitutional debt limit of 10 per cent of the assessed valuation of the taxable real estate, to meet the needs for improvement, particularly the crying necessity for more subways. To secure a larger borrowing capacity the assessment of real estate was raised in 1903 to full valuation and by amendment to the constitution, ratified in 1809, certain debts for public improvements which yield current net revenue exceeding the interest and amortization requirements, were withdrawn from the debt limit. To meet the interest on the debt and the current expenses for the support of the government the budget for 1913 called for the expenditure of $192,711,444. The tax rate is fixed at an amount varying from $1.83 in Manhattan and the Bronx to $1.92 in Richmond.

History.—A trading post was established by by the Dutch on Manhattan Island in 1613, but the first real colonization took place in 1623. The colony on Manhattan Island was known as New Amsterdam and its first municipal government was established April 14, 1652, with a *schout* (bailiff), appointed by the West India Company, and two burgomasters and five *schepens* (justices), elected by the people. When taken by the English in 1664 its name was changed to New York and in the following year it received a charter from Governor Nicolls, which incorporated the inhabitants of Manhattan Island into a body politic under the government of a mayor, aldermen and sheriff. In 1673 the Dutch regained possession, but one year later it was again transferred to the English. In 1686 Governor Dongan granted the city a new charter with increased powers. Further privileges were secured under the Cornbury charter of 1708 and the Montgomerie charter of 1730. These charters and the various acts of the colonial assembly were expressly confirmed by the first constitution of New York State and the organization and powers of the city remained substantially unchanged until 1830.

The early charters of New York City present no striking points of difference from those in force in other colonies. The second constitution of the state, adopted in 1821, provided that the mayor should be appointed by the common council. The charter of 1830 was framed by a convention composed of five delegates elected from each ward and after ratification by the people was enacted into law by the legislature. It divided the common council into two houses, composed of aldermen and assistant aldermen. The mayor lost his seat in the council and by an amendment to the constitution in 1833 became elective. The franchise, originally confined to freeholders, was extended in 1804 to taxpayers who were rent-payers to the value of $25 or more annually and in 1826 manhood suffrage was established.

In 1846 another charter convention was held, but its recommendations were not approved by

the people. In 1849, however, a new charter was passed by the legislature and ratified by the people of the city, which embodied many of the recommendations of the previous convention. The elective principle was extended to heads of departments. Still further amendments were provided for in the charter of 1853 which was passed by the legislature and ratified by the people. This marks the end, however, of the control of the city over its charter and the beginning of the period of wide-spread legislative interference in the local government.

Some reason for this is to be found in the deplorable state into which the government had fallen. By the middle of the century the population had grown to over half a million, the debt to over fifteen millions and the annual tax levy to over three millions. Public works, involving large expenditures had been undertaken. The Croton aqueduct had been begun in 1835. Street railways were introduced in 1851 and 1852. The common council had degenerated into a corrupt and partisan body, the council of 1852 earning for itself the unenviable title of the "Forty Thieves Council." It was but natural that under such circumstances the better citizens should turn to the state for relief and protection. In 1857 a revision of the charter was adopted by the legislature without submission to the people. By another act of the same year the control of the police was taken from the city and vested in a board for the metropolitan district, first appointed by the governor and later elected by the legislature. Subsequently, a metropolitan fire district and a metropolitan sanitary district were created.

Throughout the greater part of its history the political organization known as Tammany Hall (*see*) has controlled the government of the city. Originally formed as a patriotic society in 1789, it almost immediately became a political association and was from the beginning allied with the Anti-Federalists and later the Democratic party. Adopting popular issues, such as universal manhood suffrage and the abolition of imprisonment for debt, catering to the fast increasing foreign element and adept in the use of the questionable political methods so prevalent at that period, it succeeded in maintaining its hold in spite of frequent scandal and not infrequent reverses. State interference proved no remedy for misgovernment, which went from bad to worse, public attention during the Civil War being diverted from municipal affairs. By 1868 the city debt had grown to $52,000,000. This was at the beginning of the operations of the notorious Tweed Ring (*see*), which remained in complete control of the city government until the fall of 1871. This period marks the lowest depth of degradation to which the government of the city of New York ever sank. Over $60,000,000 was added to the permanent debt during this brief reign of corruption. The stealings of William M. Tweed, the first real boss of Tammany Hall, and his associates in the Ring, have been variously estimated at from $145,000,000 to $200,000,000, of which only $876,000 were recovered.

The exposures of the Tweed Ring and the dispersion of its members (Tweed himself died in jail in 1878) dealt a blow to Tammany Hall from which many thought it could never recover. In 1874, however, it succeeded in electing its candidate for mayor and since that date has controlled the city government a major part of the time. John Kelly was its next leader or boss and he was succeeded by Richard Croker, who abdicated his leadership in 1902. After a brief interregnum Charles F. Murphy, the present boss (1914), came into control.

Tweed succeeded in securing a new charter, which goes by his name, from the legislature in 1871. After his overthrow another charter was enacted in 1873, which provided for a city council of but one chamber and for a board of estimate and apportionment. In 1882 the Consolidation Act was passed, uniting in one document all laws relating to the city and under this act the city was governed until the Greater New York charter went into effect on January 1, 1898.

This charter, framed by a commission appointed by the governor, with the addition of the mayors of New York, Brooklyn and Long Island City, and enacted by the legislature in 1897, remains today the charter of the city of New York, although radically amended in 1901 upon the recommendations of another charter commission. Subsequent attempts to secure its revision have proved unsuccessful, although the charter has frequently been amended and new provisions inserted by special legislative acts. As it stands today, a document of over 330,000 words which, despite its bulk and minute detail, fails to cover all the activities of municipal government, it is badly in need of thorough and drastic revision.

Government.—The government of the city presents some important departures from prevailing custom in municipal government. The most striking features are, first, the adoption of the so-called Brooklyn plan of concentrating administrative power and responsibility in the hands of the mayor through unrestricted power of appointment and removal over the heads of departments; second, the power over financial and other legislative matters vested in the board of estimate and apportionment; and third, the subdivision of the city into five boroughs in order to provide a greater measure of local self-government.

Legislative.—The board of aldermen is designated as the city legislature. It consists of one chamber of 73 members, elected from aldermanic districts, and is by charter endowed with very considerable authority. In fact, however, New York enjoys but a limited measure of

home rule and the provisions inserted in the state constitution of 1894 to limit state interference by requiring the consent of the city to special city bills have not operated as effective check upon special legislation (*see* MUNICIPAL VETO OF STATE ACTS).

The charter prescribes the functions of government in detail, even to the point of fixing the salaries of school teachers and of all ranks in the police, fire and street cleaning departments and such provisions are subject to frequent legislative amendment. Pressed by the superior powers of the state Legislature on the one hand and of the Board of Estimate and Apportionment on the other, the Board of Aldermen remains a body exercising but few important functions and not commanding the respect of the public. All power over franchises was taken from it in 1905, and vested in the Board of Estimate and Apportionment. The sanitary code is established by the Board of Health and declared by charter to be an ordinance without the intervention of the aldermen. The most important legislative function now exercised by the Board of Aldermen is the establishment of the building code.

The Board of Estimate and Apportionment is to a large extent a unique institution in municipal government, wielding great powers which make it vastly more important in city legislation than the Board of Aldermen. Its entire membership is elected every four years and consists of the mayor, the comptroller, the president of the Board of Aldermen and the five borough presidents. The mayor, comptroller and president of the board of aldermen are elected on the general city ticket and each possesses three votes in the board, so that together they constitute a majority. The borough presidents are elected in their respective boroughs; the presidents of Manhattan and Brooklyn having two votes each and the presidents of the Bronx, Queens and Richmond having one vote each.

The board controls the finances of the city. It authorizes all bond issues. It frames the budget and as adopted by the board it is subject only to approval or rejection by the Board of Aldermen, which cannot add any new item or increase any appropriation. Even the action of the aldermen in reducing items is subject to veto by the mayor. The Board of Estimate and Apportionment also has exclusive control for the city over franchises and city streets, its powers, however, in regard to franchises being limited by those of the recently created state public service commission. The Board of Estimate and Apportionment is generally regarded as the most successful institution in New York City government.

Executive.—The mayor is the chief executive officer of the city, elected for a four-year term and receiving a salary of $15,000. During his term of office the mayor can be removed for cause by the governor of the state. The mayor has the power to appoint the heads of all the fifteen departments, except the finance department. Departments of the city named in the charter are those of finance, law, police, water supply, gas and electricity, street cleaning, bridges, parks, public charities, correction, fire, docks and ferries, taxes and assessments, education, health, tenement house. Each of these is presided over by a single head, removable at will by the mayor, with the exception of the departments of parks, taxes, and assessments, education and health, in which boards are still retained.

These departments, however, by no means cover all the administrative activities of the city. The borough presidents are independent executives and there are numerous boards and commissions not ranking as departments, appointed by the mayor, such as the commissioners of accounts, the Board of Bellevue and Allied Hospitals, the Board of Water Supply, having charge of the construction of the aqueduct for bringing water from the Catskills, the Municipal Civil Service Commission, the Board of Education and a number of lesser importance. Terms of office in the case of most heads of departments have been abolished and they hold theoretically during good behavior; practically, however, for the term of the mayor who appoints them, or for a shorter period.

The borough presidents are elected for four-year terms in their respective boroughs, at the same time as the mayor. In addition to being members of the Board of Estimate and Apportionment, they have seats in the Board of Aldermen. As administrative officers, they have charge of the construction and maintenance of streets, sewers and buildings within their boroughs. The borough presidents of Queens and Richmond also have charge of street-cleaning. Local improvements are initiated by boards having charge of local improvement districts of which there are twenty-five in the city. The board is composed of the aldermen of that district and the borough president. The borough president also appoints members of the local school boards.

The comptroller is also elected for a four-year term, coincident with that of the mayor, and is removable by the governor. He is the chief fiscal officer of the city, with independent powers of investigation and audit, and is the member of the board of estimate and apportionment mainly responsible for the preparation of the budget. Connected with his department is the office of the city chamberlain, who receives a salary of $12,000 and has the custody of all money paid into the city treasury. Money is in turn paid out by the chamberlain on warrants signed by the comptroller and the mayor. The chamberlain's office is named in the charter as one of the bureau of the finance department and there are five others: (1) for the collection of revenue from markets, sale of property, etc.; (2) for the collection of

taxes; (3) for the collection of assessments and arrears; (4) for audit; (5) for municipal investigation and statistics.

The president of the Board of Alderman is not an administrative official, except when as vice-mayor he takes the place of the chief executive during his absence or on occasion of his death or disability. He is elected for a four-year term and receives a salary of $5,000.

The Board of Education is composed of 46 unpaid members, apportioned among the boroughs and appointed by the mayor for five year terms. The chief executive is the city superintendent of schools who is appointed by the board for six years and is assisted in his work by eight assistant and twenty-six district superintendents. There are 46 local school board districts, in each of which there is a board of seven charged with the inspection of the schools. Five of the members of each board are appointed by the borough presidents, to serve without pay and with them act as a member of the board of education and a district superintendent.

The civil service of the city numbers 72,799 of which 18,980 are school teachers, 10,424 are police and 4,889 members of the fire department. The civil service law of the state extends over the city and is administered, subject to the supervision of the state civil service commission, by a municipal civil service commission of three, appointed by the mayor. School teachers are excepted from the provisions of the state law, but are subject to an equally stringent merit system established by the charter. The municipal civil service is divided as follows:

Unclassified (not including school teachers)	273
Exempt class	784
Competitive class	30,115
Non-competitive class	5,048
Labor class	17,599
Total	53,819

The law is at present well enforced. The requirements of competitive examination apply to promotions as well as to appointments, and transfers, reinstatements and removals are subject to regulation. No person employed by the city can receive pay unless his pay-roll or account bears the certificate of the civil service commission that he has been appointed or promoted in accordance with law.

Judicial.—The courts of the city have minor civil and criminal jurisdiction. The civil courts are the city courts, with ten justices serving for terms of ten years and the twenty-four municipal district courts, with forty-four judges, elected for a like term, who take the place of justices of the peace. The criminal courts are the court of special sessions and the magistrates' courts. The court of special sessions has fifteen justices, appointed by the mayor for ten-year terms. The magistrates were formerly known as police magistrates and are appointed by the mayor for ten-year terms. There are seventeen in the first district, composed of Manhattan and the Bronx and a like number in the second district, comprising Brooklyn, Queens and Richmond. The children's courts are attached to the court of special sessions (*see* COURT, JUVENILE).

Those who have made a study of New York City government recognize that its machinery is cumbersome and in many respects ineffective. Its complexity leads to waste and prevents the citizens from securing accurate knowledge as to how they are governed. That a great improvement has taken place in the last ten years without any marked changes in form of government cannot fail to be admitted and it is wrong to judge the government of the city in the light of its past history without taking count of these improvements. The greatest, and presenting the most complex problems, it is by no means the worst governed municipality in the United States. Attempts at charter revision have met with ill success in the last decade and there is no general agreement throughout the various divisions of the city regarding the amendments that should be made. That certain changes are highly desirable—that the Board of Alderman, for instance, should either be thoroughly reconstructed or abolished—is obvious; but regarding a redistribution of administration powers between the central and borough governments great differences of opinion exist. The movement for a larger measure of municipal home rule is gaining ground and experience with unsuccessful attempts by the legislature at charter revision is leading to the conclusion that no thorough revision can be secured and obtain any degree of stability and permanence unless the people of the city are given the opportunity to pass upon their own form of government.

See BOARDS, MUNICIPAL; CHARTERS, MUNICIPAL; CITIES, CLASSIFICATION OF; CITY AND THE STATE; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES; MAYOR; MUNICIPAL GOVERNMENT.

References: E. D. Durand, *Finances of New York City* (1898); D. F. Wilcox, *Great Cities in America* (1911), 67–181; *The Greater New York Charter* (1894); G. Myers, *History of Tammany Hall* (1901); W. McAdoo, *Guarding a Great City* (1906); A. R. Hatton, Ed., *Digest of City Charters* (1906); historical treatment in T. Roosevelt, *New York* (1891); J. G. Wilson, Ed., *Memorial Hist. of N. Y.* (1891–3); M. J. Lamb, *Hist. of City of N. Y.* (1877–1881), published also with supplement by Mrs. B. Harrison (1896). ELLIOT H. GOODWIN.

NEWFOUNDLAND. An island in the Gulf of the St. Lawrence, and England's oldest colony in America, having been discovered by the Cabots in 1497. The island is about three hundred miles long and of about equal breadth, with an estimated area of 40,200 miles and a population which was estimated in 1909 to be

234,588. For administrative purposes Newfoundland includes the Labrador mainland.

For many years after its discovery Newfoundland was merely a fishing ground the use of which England shared with other countries. By the Treaty of Utrecht France abandoned her territorial rights to Newfoundland, retaining fishing privileges along the so-called French shore, which privileges were confirmed by the Treaty of Paris in 1763. Governed as a crown colony until 1832, Newfoundland then received its first grant of representative government. The principle of executive responsibility was not fully recognized until 1854.

Newfoundland was invited to enter the Canadian confederation in 1867, but declined. Two years later, however, the island legislature passed resolutions in favor of joining the Dominion, but in a general election the people of the island pronounced strongly against the plan. From time to time during the last forty years the project has been revived but never has resulted in definite action, and Newfoundland still retains its place as a separate self-governing colony.

The government of Newfoundland consists of a governor appointed by the crown for a five-year term, a responsible ministry of nine members chosen by the governor, an upper house of not more than seventeen members appointed for life, and an elective assembly of thirty-six members. At assembly elections manhood suffrage prevails. During the last three or four decades the chief political issues have been questions relating to the protection of the island fisheries, government ownership of railways, and reciprocity with the United States. Long-standing disputes with France and with the United States were finally settled by the Anglo-French Convention of 1904 and the Hague Arbitration of 1910 respectively. The railway question has at least been temporarily disposed of, and the failure of the United States Senate to ratify a reciprocity agreement proposed some years ago eliminated that question as an important issue. The provincial capital, St. John's, has a population of about 31,000.

References: D. W. Prowse, *Hist. of Newfoundland* (1897); F. E. Smith, *The Story of Newfoundland* (1901); H. E. Egerton, *Hist. of British Colonial Policy* (2d ed., 1905); E. J. Payne, *Colonies and Colonial Federations* (1904)

W. B. M.

NEWFOUNDLAND FISHERIES DISPUTE. The treaty of 1783 between the United States and Great Britain provides:

> It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands and Laborador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

Great Britain contended that this clause was annulled by the War of 1812. The consequent dispute was settled by the treaty of 1818, by which, "the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland," etc.

Disputes arising under this treaty were supposed to be adjusted by the treaty of 1854, which was to be subject, after ten years, to a "notice to the other of its wish to terminate the same." Under this agreement the United States gave notice which terminated the treaty in 1866 and the conditions of 1818 revived.

These provisions of 1818 were modified by those of the Treaty of Washington of May 8, 1871, which revived some of the provisions of the treaty of 1854 and provided that adjustment as to inequalities in the privileges should be balanced by a money payment, the amount to be determined by commissioners. The Commission thus provided for met at Halifax, June 15, 1877, and on November 23 awarded Great Britain five and one half million of dollars in gold. The provisions of the treaty of 1871 were terminated in accord with a notice on July 1, 1885, and a diplomatic agreement was entered into between the United States and Great Britain for the remaining months of the fishing season of 1885.

A *modus vivendi* in 1885 provided for temporary continuance of fishing. Other *modi vivendi* were agreed upon in 1906 and 1907. This *modus vivendi* of 1907 was continued for 1908 by an exchange of notes to that effect. After many years of controversy a "Special Agreement, Submitting to Arbitration the North Atlantic Coast Fisheries" was signed on January 27, 1909, and a decision was rendered by the arbitrators September 7, 1910.

See ARBITRATIONS, AMERICAN; COMMERCE, INTERNATIONAL; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; HEADLANDS THEORY; NORTH ATLANTIC FISHERIES ARBITRATION; SEAL FISHERIES; SERVITUDES, INTERNATIONAL; THREE-MILE LIMIT.

References: W. M. Malloy, *Treaties and Conventions, 1776–1909* (1910), I, 586, 729, 847; P. T. McGrath, "Atlantic Fisheries" in *Review of Reviews*, XLI, June, 1910, 718; *Am. Journal of Int. Law*, Oct. 1907, Supplement I, 349, 375, Supplement III, 168; R. Lansing, "North Atlantic Coast Fisheries Arbitration"

in *ibid*, V (1911), 1; C. Isham, *The Fishery Question* (1887); J. B. Moore, *Digest of Int. Law* (1906), I, 767 *et. seq.*

GEORGE G. WILSON.

NEWPORT SYSTEM OF CITY GOVERNMENT. In 1906 a charter of unusual character was adopted by Newport, R. I, which has had marked success in its working. The fundamental idea was taken from the "Limited Town Meeting" proposed by Mr. Alfred D. Chandler of Brookline, Mass. As applied in Newport, it is based on a representative council of 195 members (39 from each of the five wards) elected for three years, one-third renewable each year. This council, in which are vested all legislative powers, has, in general, the methods and functions of a town meeting. In addition, a mayor and five aldermen, each elected for one year make up the "Board of Aldermen." For nominations at least 30 signatures on a nomination paper are required for a member of the council; 100 for an alderman or member of the school board, and 250 for mayor. The aldermen are nominated by ward, but are elected at large. Under the state constitution a voter for a councilman or alderman must pay a tax on at least $134 of property, which excluded about a fourth of the general electorate of 5,200 (the city having a population of about 25,000).

The representative council elects a chairman and various city officials and designates a committee of 25 for the formulation of the budget. The committee usually takes about six weeks for this work. The result must be printed and sent to all taxpaying voters at least a week before the council meeting called to consider it.

No expenditure may be made or contract entered upon by the board of aldermen for the expenditure of money which has not been authorized by the council. Any vote of the council requiring a special expenditure of $10,000 or more must be submitted to the qualified electors if within seven days a petition to that effect be filed, signed by ten qualified electors from each ward in addition to at least 100 qualified electors of the city. Provision is also made for a citizen's initiative on the expenditure of sums exceeding $10,000, on petition from 100 qualified electors; if the proposition be disapproved by the Representative Council, it shall be submitted to the electors on petition by 20 from each ward, and, in addition, by at least 200 qualified electors of the city.

The powers over the police are vested in the mayor by and with the consent of the board of aldermen, subject to the direction of the representative council.

In addition to the two stated meetings of the representative council in the year (for organization and for consideration of the budget), the council meets on call about six times a year. Its proceedings compare favorably with those of any other legislative body. There has never (1913) been a failure to show a quorum on first roll-call. The effect has been highly educational; there is full publicity and the papers print practically verbatim reports of proceedings which sometimes occupy many columns. Under the charter there has been reduction of debt, and a general improvement of finances and of credit.

See CHARTERS, MUNICIPAL; COMMISSION SYSTEM OF CITY GOVERNMENT; COUNCIL, MUNICIPAL; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES; TOWNS AND TOWNSHIPS.

F. E. CHADWICK.

NICARAGUA. Nicaragua, the largest republic in Central America, originally part of the captain-generalcy of Guatemala, later of the Viceroyalty of New Spain, declared, with Central America (*see*), independence from Spain in 1821, and withdrew from that federation in 1838, its constitution being proclaimed November 30, 1838. The republic lies between latitude 10° 4′ and 15° north, and longitude 83° 15′ and 87° 40′ west (Greenwich), with an area of 49,200 square miles, and a population of about 600,000, or something over twelve to the square mile. The present constitution (1905) provides for a unicamaral legislative chamber (*Camara de Diputados*), one deputy for each 10,000 inhabitants, elected by popular vote for a term of six years, the *camara* being partially renewed every two years. The executive is a president, elected by direct vote for six years; in place of a vice-president, the *camara* elects three *designados*, one of whom takes the president's place in case of need. The cabinet consists of five ministers: foreign affairs and public instruction; government, justice and police; treasury and public credit; war and marine; public works. A national supreme court, elected by the *camara* for a term of six years, and minor courts compose the judiciary. The republic is divided into thirteen departments, three districts and two *comarcas*, again subdivided into municipalities (about like townships). The capital is Managua. The state religion is Roman Catholic.

References: J. I. Rodriguez, *Am. Constitutions* (1905), I, 299–324; Pan American Union, *Publications.*

A. H.

NICARAGUA CANAL POLICY. The special relation of the United States with Nicaragua bearing on a future canal began when the travel to California in 1849 began to pour through the route from Greytown on the Gulf of Mexico through the San Juan river, westward to the lake and across the divide to the neighborhood of Corinto on the Pacific. In 1849 without instructions, Hise negotiated a treaty by which the United States was to have special privileges in that route. Secretary Clayton refused to father the treaty, and instead negotiated the Clayton-Bulwer treaty of 1850 (*see*) by which the United States for-

mally agreed not to claim special privileges in any isthmus route. This defined the status of the Nicaragua route, though disturbed by some attempts of Great Britain to get a permanent foot hold on the coast (*see* MOSQUITO QUESTION), till after the Civil War, when Seward negotiated a treaty giving to the United States a privileged status, which was ratified but never operative.

When the Panama company began operating about 1879 an effort was made to check or to parallel their scheme by an American canal through Nicaragua. In 1884 Secretary Frelinghuysen negotiated a treaty for that purpose with Zavala the Nicaraguan representative, which was withdrawn by President Cleveland when he came into office in 1885.

Meantime an American company was chartered and made a vigorous effort to get the United States to guarantee its bonds. It did a little work from 1890 to 1893, but by this time the Panama Canal Company was substantially bankrupt, and an opportunity appeared for the United States to construct a canal on that route. For fifteen years there was intense rivalry between the advocates of the Nicaragua route and the Panama route. Three commissions in succession, 1895, 1897, 1899, examined the Nicaragua route and were favorable to it.

The matter came to a crisis in the report of the Walker Commission in 1901, which expressed a preference for the Nicaragua route, on the ground that the franchises and the material of the French Panama company could probably not be obtained on reasonable terms. In January 1902, the House voted for the Nicaragua route with only two dissentients; but the influence of Senator Hanna of Ohio prevented its going through as an absolute measure. Instead the Senate passed, and the House accepted, a statute of June 28, 1902, under which the President was to obtain, if possible, a concession for a canal on the Panama route; and failing that, to proceed to secure from Nicaragua the right to construct a canal through Nicaragua. By a treaty with Panama of November 18, 1903, the Panama route was secured and public interest in the Nicaragua route was extinguished.

See CANAL DIPLOMACY; FRENCH PANAMA CANAL; MOSQUITO QUESTION.

References: A. B. Hart, *Am. Hist. Told by Contemporaries*, IV (1897–1901), 622–627; L. M. Keasbey, *Nicaragua Canal and Monroe Doctrine* (1896); J. H. Latané, *America as a World Power* (1907); Isthmus Canal Commission, *Report* (1901); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 257, 267.

ALBERT BUSHNELL HART.

NICHOLAS BIDDLE'S UNITED STATES BANK. A name given the United States bank by its enemies at the time of Jackson's attack upon the Bank. Nicholas Biddle, the president of the bank from 1823 to 1839, was the chief defender of the bank. See BANK OF THE UNITED STATES, SECOND. O. C. H.

NIGHT COURT. See COURT, NIGHT.

NIGHT RIDERS. In 1904 some of the tobacco growers in Kentucky formed a combination called the Planters Protective Association to oppose what they considered to be a monopoly of the tobacco buyers, principally the American Tobacco Company and the "Regie," the foreign syndicate. A Burley Tobacco Association was also formed. They agreed to hold their crops till they could get what they thought to be a just price. In order to carry out this plan it was necessary to enlist most of the producers of tobacco, and about 27,000 joined. When it was evident that a large number would not join voluntarily, and that some of the outsiders got a price above that paid to members, a reign of terror began. In December, 1909, tobacco barns and other property were burned and several people were killed in cold blood. The governor of the state at one time proclaimed martial law and called out the militia. Test criminal cases were made up, most of which failed because the juries disagreed. Belated convictions were obtained for a few acts of violence. The movement had some effect in raising the price of tobacco, but the acreage in Kentucky and Virginia fell off. See COERCION OF INDIVIDUALS; EXECUTION OF PROCESS; MOBS AND MOB RULE; ORDER, MAINTENANCE OF; RIOTS, SUPPRESSION OF. References: *Independent*, LXIII, 1487, LXIV, 645–670, 1061, LXV, 850, 1584, LXVII, 78 (1908–1909); *World's Work*, XVII, ii, 213, Feb., 1909; *Everybody's Magazine*, XX, 548, Apr. 1909; U. S. Dept. of Agriculture, *Year Book*, 515. A. B. H.

NIGHT SCHOOLS. See SCHOOLS, NIGHT.

NIHILISM. Originally nihilism was an extreme form of individualism in Russia, which combatted authority of every kind whether in the family, religion or state. It did not become a political movement, however, until after the emancipation of the serfs in 1861, since which time it has taken on the form of an anarchical and revolutionary aspect. The word is said to have been first used by the Russian revolutionist, Ivan Turgenieff in his novel "Fathers and Sons." Etymologically the term is derived from the Latin "nihil" which indicates the destructive aims of the movement. A "nihilist," said Turgenieff, "is one who bows to no authority and who accepts no principle without examination, no matter what credit the principle may enjoy."

Before the emancipation of the serfs, nihilism in Russia was little more than a philosophy of idealism which was based upon an extravagant belief in individualism and it rep-

resented an intellectual rather than a political or social movement. The discontent among the lower classes and especially the landed peasantry which followed the emancipation act converted it into a social and political movement and gave it the character of a revolutionary propaganda which grew steadily under the teachings of men like Herzen, Bakunin, Turgenieff, Tchernychevski and other Russian radicals. The movement was intensified by the policy of repression adopted by the Czar Alexander II and after 1870 it became so widespread and powerful as to threaten the existence of the state. Through the assassination of public officials, beginning with the murder of the Czar in 1861, and other acts of violence, it caused the government great concern and led to a policy of repression. Newspapers which disseminated its teachings were suppressed, many nihilists, like Tchernychevski, were sent to Siberia or executed, freedom of assembly was greatly restricted, Sunday schools were prohibited, and secret societies were broken up wherever they could be found. In the meantime nihilism spread and assumed more and more the character of a terrorist movement. Bakunin, until his death in 1876, made it the main business of his life to propagate the teachings of nihilism among the peasants and to excite them to revolt and to murder public officials, and in this work he was aided by Peter Lavroff who had taken active part in the Paris Commune of 1871. After 1878 the movement known as the Black Division was inaugurated, which insisted upon a division of the communal land and of course the great estates owned by the *noblesse*, so that every inhabitant should have a share of the soil.

The principal parties and organizations which collectively constitute the revolutionary forces of Russia today are: the Russian Federation of Emancipation which demands the introduction of popular government based upon universal suffrage; the Russian Party of Revolutionary Socialists which of all the parties is the most united and aggressive and which insists upon similar political reforms with certain differences; the "Socialist Democratic Party" which unlike the one last mentioned would have nothing to do with the agrarian program and which disapproves of the policy of terrorism; and the "Jewish 'Band' of Associated Workers" which, aside from its socialistic aims demands better treatment of Jews.

See ANARCHY.

References: J. W. Buel, *Russian Nihilism and Exile Life in Siberia* (1883); George Kennan, *Siberia and the Exile System* (1891); J. Rae, *Contemporary Socialism* (1891), ch. ix; E. V. Zenker, *Anarchism* (1897), chs. iv–v; K. Zilliacus, *The Russian Revolutionary Movement* (1905). JAMES W. GARNER.

NOBILITY, TITLES OF. The provisions found in many state constitutions and in the Federal Constitution applicable to the federal and state governments (Art. I, Sec. ix, ¶ 8, Sec. x, ¶ 1) prohibiting the granting of titles of nobility are designed no doubt, first, to preserve equality before the law, and, second, to secure in perpetuity a republican form of government. Such provisions are not essential to theoretical equality before the law, for such equality is fundamental in the law of England notwithstanding the existence of titles of nobility. But the framers of the Constitution evidently contemplated a form of government in which there should be no special privileges conferred by rank or title. The additional provision in the Federal Constitution prohibiting the acceptance by any person holding any office of profit or trust under the United States of any present, emolument, office or title from any foreign sovereign or power without the consent of Congress, was probably intended to prevent the exercise of foreign influence in governmental affairs. These provisions in the Federal Constitution are substantially borrowed from the Articles of Confederation. E. McC.

NOLLE PROSEQUI. A formal entry upon the record by the plaintiff in a civil proceeding or by the prosecuting attorney, in a criminal action, that he will not further prosecute the suit, as to some of the counts, or against some of the defendants, or that he will discontinue the action entirely. **Reference:** Davenport *vs.* Newton, 71 *Vt.* 11, 24. H. M. B.

NOMINATING SYSTEMS. Necessity.—Nomination of some sort must procede election. In any country where officers are chosen by election a nominating process must be used. Even where there are no political parties to make nominations candidates must announce themselves or they must be announced or selected by others. An important function of the political party is that of naming the party candidates. In pursuance of this function a large part of the American party machinery has been created. The organized party calls for two nominations, first nomination within the party for the position of candidate, then nomination by the party to the voting constituency.

Self-nomination.—In England and in America during the colonial period, and more recently in the southern states the system of self-nomination prevailed. A man desiring a certain office makes a formal appeal, by letter or public address, to the voters for their support at the ensuing election. With the development of party machinery for nominating purposes this system has almost disappeared from the United States. Self-nomination, however, still prevails within the political parties for securing official party nomination. That is, John Smith, for instance, announces himself a candidate for county sheriff, subject

to the action of the Democratic county convention to meet June 4, 1910. If, at this convention, John Smith receives the official sanction of his party he thereby becomes the regular candidate for the office. Sometimes a considerable body of voters may be dissatisfied with the party nominees. In that case an independent candidate may appear, either self-nominated or nominated in some irregular manner.

Local Caucus and Primary.—In the New England town the voters assemble and organize in town meeting. Here town officers may be elected without any sort of previous nomination. Members of the town meeting may both nominate and elect in open meeting; but where the meeting becomes large and unwieldy, or where the voters are divided into parties, or separated by special interests they are likely in some way to agree in advance as to who their candidates shall be. In Boston it early became customary for interested voters to meet and agree upon candidates to be chosen at the town meeting. This preliminary meeting came to be called a caucus. A secret meeting to promote the interests of certain candidates is called a "parlor caucus." An open meeting called to make nominations is simply a caucus. Outside of New England such a meeting is usually called a primary.

In townships, parishes, wards, cities and counties, where all the local officers are chosen at an election, some sort of preliminary nomination is almost a necessity. For this purpose the caucus or primary came into early and general use. The voters or the party members in a ward or in a township could easily meet and make up a local ticket, but it was not so easy to make nominations to be voted for by the entire city or county. City and county nominations, however, have often been made by mass meetings of the voters or mass meetings of the party members. For large cities and counties it was found to be more convenient to make nominations by means of committees appointed at the primaries in wards and townships. This gradually developed into city and county conventions.

The Delegate Convention.—For districts larger than the county the mass convention system is clearly impractical. The delegate convention system was naturally found most convenient for the larger districts. By this method nominations were made for members of the state legislatures, members of Congress, judicial officers and finally state officers. When Washington was inaugurated, 1789, the convention system for local nominations was in common use. By the end of the century it was extended in many states to state officers.

The Legislative Caucus.—By the year 1800 the country had become divided into political parties. The two parties, nearly equally balanced, were contending for the prize of the presidency. To insure united action the party members of Congress met in secret caucus and nominated their candidates for President and Vice-President. About the same time it became customary for the party members of the state legislature to meet in party caucus and place in nomination officers to be voted for by the entire state. There were thus in vogue in the states three distinct systems; first, a local caucus or primary for nominating local officers second, a legislative caucus for state officers; third, committee or delegate conventions for intermediate districts. The legislative caucus was always unpopular but it was endured for a season on account of its convenience. Voters were scattered and roads were bad. All the while the delegate convention system was growing in favor until, about 1832 or 1835, it had entirely displaced the legislative caucus, except that the state legislative caucus continued and still continues to nominate candidates for the United States Senate. This is to facilitate their own action in electing the Senator.

The Primary Election.—After the Civil War a widespread opposition to the convention system arose. Nominations had fallen into the hands of office holders and office seekers who manipulated the party machine so as to shut out the mass of the voters from a share in the making of nominations. To correct these evils a new nominating system was invented. This is known as the nomination by primary election. The primary election system abolishes by law or by party rule the delegate convention and substitutes for it nominations by a regular election under the control of state officers.

Nomination by Petition.—The ballots used at the primary elections for making nominations are printed by the state. The officers of the state are therefore in need of some sort of official notice of the names to appear thereon. This is provided for by what is known as nomination by petition. Candidates for each of the offices are required to present petitions signed by a certain number or a certain percentage of the voters asking to have their names inserted in the ballot. The result of the primary election determines the names to be placed on the ballot for the regular election. Some of the states also provide for having names added by petition; and some of those having no primary election system provide an official ballot to be used at the general election. In the latter case official nominations are made by petition.

The laws providing for the nomination of candidates by petition have in some instances given rise to a party trick of naming a candidate to appear on the official ballot, for the purpose of drawing votes from a dangerous rival. For instance, it is said that a mayor of Boston was elected by using party influence to secure two candidates of the opposite party to let their names appear on the ballot.

See CAUCUS; CONVENTION, POLITICAL; NOMINATION OF THE PRESIDENT; PETITION, NOMINATION BY; POPULAR GOVERNMENT; PRIMARY; PRIMARY, DIRECT.

References: F. W. Dallinger, *Nomination for Elective Office in U. S.* (1897); P. S. Reinsch, *Readings on Am. State Gov.* (1911), 364–434; E. C. Meyer, *Nominating Systems* (1902); M. Ostrogorski, *Democracy and the Party System* (1910), index title "Candidate"; C. L. Jones, *Readings on Parties and Elections* (1912), chs. ii–iv. JESSE MACY.

NOMINATION OF THE PRESIDENT

Early Customs.—The American party system grew out of conflicting views of national issues which led to contests for the control of the presidency; and the complex machinery through which our political life manifests itself, although it is used for the nomination of state and local officers also, all revolves about the quadrennial choice of a President. Until the year 1800 no definite method had been adopted for placing presidential candidates before the people. Washington was by common consent the candidate at the first two elections. For the third, informal agreement made John Adams and Thomas Jefferson the leading candidates of Federalists and Republicans; but for the fourth election candidates were nominated for each party by a congressional caucus composed of the party members of the two houses of Congress. Until 1824 the always unpopular congressional caucus was continually used by the Republicans, save in 1820, to nominate the presidential candidates. Crawford was then the Republican caucus nominee, but three other candidates appeared, all nominated by other methods. In some cases state legislatures or the party members of the state legislature made nominations; or such members together with other political leaders named the candidates; or they were chosen at mass meetings or conventions; newspapers also were active in bringing out candidates. These irregular methods resulted in too many nominations, so that in 1824 the election, for the second time, devolved upon the House of Representatives. Four years later, when party lines were becoming more clearly defined, but two candidates were nominated, although as before by diverse processes.

The Convention.—The national nominating convention composed of delegates from the several states and territories first appeared in 1831. The plan was not new, since conventions had for many years been used for choosing candidates for state, district, county and city offices, and the national convention appears as the logical completion of the system already worked out in the states (*see* CONVENTION, POLITICAL). No extensive party organization is required for nominating presidents by congressional caucus; but the national convention calls into action a vast array of machinery. Each state and territory has its state party committee and its state convention; each congressional district of the state, its committee and convention. Congressional districts are divided into smaller areas, as counties, parishes, etc., and each of these into towns or townships. Cities and large towns are divided into wards, and these various areas have all their party conventions, caucuses or primaries, with permanent party committees, and most of these state and local political organs have some share in the business of nominating a President. All the local wheels and bands are set a-whirring when the chief managers of the party machine, the national committee, begin their public work by holding a meeting, usually in Washington, some six months before the national conventions. At this meeting the committee fixes time and place for the convention and issues a call for the choosing of delegates by the party organs throughout the country. Each of the parties sends delegates to its national convention equal in number to twice the number of members of the two Houses of Congress.

The call of the national committee makes it the duty of each state committee to call a state convention to select delegates to the national convention. In the Democratic party, and until recently in the Republican party, it has been permissible for the state convention to name all the delegates, or congressional districts might name their own delegates to the national convention, as the state party authorities preferred. In both parties, however, the four delegates-at-large were, and are, chosen by the state convention. The Republican national convention of 1892 adopted a rule requiring the congressional districts to choose their delegates in the same manner as they choose their party candidates for Congress, *i. e.*, by a district delegate convention or by primary election. Delegates, however named, are often selected with reference to the support of a particular presidential candidate. They are often instructed by the appointing body to cast a unanimous vote in a certain way, or resolutions are adopted favoring a certain candidate. In the national convention, however, delegates thus instructed or advised are not held to such prescribed lines of action.

When the national convention has become fully organized and, usually, after the platform has been adopted, nominations are in

order. The roll of states is called and each delegation is at liberty to name a candidate. If only one state responds, the business may be quickly and easily accomplished; but usually several nominations are made and often speeches of great length are delivered. For the vote the roll is again called and the chairman of each delegation announces the vote of his state. Delegates may vote for persons other than those formally presented to the convention. Sometimes a "dark horse"—*i. e.*, a man not previously named—captures the prize. Voting is continued until someone has secured the required number of votes and becomes the convention nominee. At this point courtesy requires a friend of the leading defeated candidate to move that the nomination be made unanimous. A committee is then appointed to inform the successful candidate of his honor. The nomination of the Vice-President follows according to similar procedure, but commands much less of public interest. After this manner through the nominally free action of hundreds of delegate bodies representing the wishes of the rank and file of party members scattered from ocean to ocean, a great party chooses its head. But so complicated is the organism for discovering and registering the people's will that it has been found possible to interfere at various points with this ostensible simplicity and freedom of action and with the final result.

Forces Influencing Action of the Convention.—It frequently happens that a candidate has been agreed upon before the convention meets. The people themselves may have made up their minds, for popular discussion upon the subject is always rife, and the series of primaries and conventions may only give perfunctory expression to their choice. This is most likely to be the case when a President is serving his first term and is a candidate for renomination. Many forces, open or secret, affect a presidential nomination. Chief among them are the use of patronage, the use of money, and the personal qualities of candidates. While the spoils system was in full force the incumbent of the office, if himself a candidate, was able to wield enormous power on his own behalf, since he practically controlled the governmental patronage; but the reform of the civil service has greatly restricted the field for such partizan use of the offices, though its influence is not wholly eliminated. This is shown by the peculiar relation which the Republican party holds to the South in the matter of presidential nominations. Large sections of that region have no effective local Republican organization, and only by the federal patronage is the party kept alive. Though these states have no share in electing Republican Presidents they have often been a determining factor in nominating candidates. In state and local conventions representation is determined by the strength of the party vote, while in national conventions the states are represented as such, regardless of the party vote. Hence, in a Republican national convention, a dozen southern states are represented largely by federal office-holders who are practically without local support.

The great financial interests of the country are always a factor in the choice of candidates. Many cities have at times been dominated by the owners of public franchises and other monied interests. A few state governments, even, have been thus controlled. But the office of the presidency has never to the same extent come under such influence. The money power of the country is indeed always active in respect to the choice of candidates and the party in power is sure to be accused of being unduly influenced by financial motives. Campaigns are costly, and party committees naturally look with favor upon candidates who will attract large contributions from the rich. Vice-Presidents in particular have been nominated because of their financial strength.

The personal qualities of a candidate or his special gifts of political leadership have often determined his nomination. Jackson, Clay, Douglass, Blaine and Bryan, were all spectacular personalities. Tilden and Cleveland won nomination because of their attitude towards certain reforms. In recent years the President receives increasing recognition as the responsible head of his party. He is expected to lead in respect to legislative policies as well as in administration. The office demands statesmanship of a high order combined with a talent for popular leadership. The advent of this new claim upon the President for skilled party leadership coincides with the wide-spread discrediting of the use of money and patronage in securing the nomination. The new and nobler power is displacing the old unworthy one. Candidates may now practically nominate themselves, or may win the honor by surpassing others in the formulation and exposition of policies in which the voters believe.

Direct Primary.—The substitution of a primary election in place of the convention for choosing state and local candidates (*see* PRIMARY, DIRECT) suggests the possibility of extending the same process to the nomination of Presidents. Already many states name the delegates to the national convention by a party vote at the primary election. A few states have made provision for expression at the primary election of a choice for presidential candidates. If this practice should become universal these candidates would be virtually chosen by popular election and the nominating convention would become a mere ratifying body or it would disappear altogether.

See CANDIDATE; COMMITTEES, PARTY; CONVENTIONS, POLITICAL; NOMINATING SYSTEMS; PRIMARY, DIRECT.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 222–225, chs. lxix, lxxiii; S. D. Fess, *Hist. of Pol. Theory, etc.* (1900), chs. vii, viii, xv; C. A. Beard, *Am. Government and Politics* (1910), 166–179; J. Macy, *Party Organization and Machinery* (1904), chs. iii–vi; J. A. Woodburn, *Political Parties* (1903), chs. x–xii; M. Ostrogorski, *Democracy and the Party System* (1910), ch. viii, *Democracy and Political Parties* (1902), 244–277; R. C. Brooks, *Corruption in Am. Pol.* (1910), 270–271; F. N. Dallinger, *Nominations for Elective Office in U. S.* (1897); P. S. Reinsch, *Readings on Am. Federal Gov.* (1909), 826–845; E. Stanwood, *Hist. of the Presidency* (1898), ch. xiv; W. G. Sumner, *Andrew Jackson* (1882), 73–100, 254, 273, 374–379; John Bigelow, *Memoirs of John C. Fremont* (1856), 446–460; C. L. Jones, *Readings on Parties and Elections* (1912), ch. iv.

JESSE MACY.

NOMINATION PAPERS. Under all ballot systems the voters can indicate their choice in writing; under the old system of separate party tickets the independent voter might also use a paster. But under the Australian ballot, nominations have to be recorded beforehand so as to get them on the ballot. Parties recognized as such by the law have the right to have their nominees printed on the ballot. But under all good systems voters may unite on candidates, and if they get signatures to a number established by law, may file nomination papers which insure their appearing on the ballot.

Nomination papers must bear a heading designating the office, party, precinct, town or township, county and state. In some states the signatures must be a certain per cent of the votes cast in a previous election. Name, address, and in some states the date are required: and sometimes a notarial certificate. The required number of signers is usually small, and a considerable number of candidates may therefore appear on the ballot especially in the primary elections. This element of weakness may perhaps be remedied by preferential voting, or by a second ballot system.

For primaries the signers of papers must usually declare that they are voters; that they are members of the political party concerned, and that they intend to support the candidate at the primaries. Signers must reside in the territory in which the candidate seeks nomination. A voter cannot sign more papers than there are to be candidates necessary to fill the positions. After the nomination papers are signed, they shall be open for inspection for a certain number of days. If not according to law, or insufficient, the names will be thrown out. The names of persons with nomination papers complete are placed on an official ballot, the regular election officers conducting the election. Certificates of nomination are sent to the successful candidates seeking nominations. Nomination papers are also available in most states to go alongside the names certified by party primaries.

See BALLOT; CANDIDATE; NOMINATING SYSTEMS; PRIMARY; PRIMARY, DIRECT.

References: Election laws of the different states; C. E. Merriam, *Primary Elections* (1909).

T. N. HOOVER.

NOMINATIONS IN GREAT BRITAIN. There is no recognition of political parties in the enactments governing the nomination of candidates for the House of Commons or for local governing bodies. Nominations for the House of Commons are simple and unhampered except by the requirement of a deposit from a candidate to cover his quota of the official costs of the election. A man who has had no residence in a constituency and no connection with it can come on the scene on the day of nomination, and if he can find the necessary number of voters to sign his paper, there is nothing to hinder his going to the poll. Nomination either as a candidate for the House of Commons or for a municipal council is regulated by the Ballot Act of 1872. The returning officer is required on the receipt of the writ for a parliamentary election to give notice of the day and place of election, and of the poll if the election is contested. The law admits of a little leeway and there is usally a conference between the returning officer and the agents of the candidates as to dates. The day and the hours between which the returning officer will sit to receive nominations are advertised. Nominations are made in writing. Each candidate must be proposed and seconded by registered electors for the constituency, and the names of eight other registered electors must be affixed to the nomination paper. It often happens that there are three or four nomination papers on behalf of one candidate. This is a guarantee against any informality that might invalidate a nomination paper. More usually, however, several nomination papers are handed in with a view to giving different groups in the candidate's following an opportunity of publicly rallying to his support. If within an hour of the time fixed for the election, no more candidates are nominated than there are vacancies, the election is then made and the names—in the case of members of the House of Commons—returned to the Crown Office in Chancery. If there is a contest the election is adjourned to a polling day to be fixed by the returning officer; and it is at this stage, before the ballots are printed, that candidates must make a deposit with the returning officer to cover the official expenses of a poll. On the nomination papers there is no mention of the political party of the candidates, and on the ballots there are neither party emblems nor any mention of parties. Names of candidates are placed in alphabetical order, and, except that the pro-

fession or business of the candidates is stated, the ballot paper contains scarcely more particulars than a man enters concerning himself on a hotel register.

Party machinery is not nearly so complete nor so elaborate in Great Britain as in the United States or even in Canada. There are scores of parliamentary constituencies in which the local party organizations are weak and loosely held together; and it is only with the Nationalists in Ireland and latterly with the Socialist and Labor party that machinery for nominating parliamentary or municipal candidates has approximated the organization maintained by parties in the United States.

See Local Government of England; Nominating Systems; Parliament; Party Government in Great Britain.

References: A. L. Lowell, *Government of England* (1908). Edward Porritt.

NONCOMBATANT. In time of war and in determining the treatment of the enemy the population is usually divided into combatant, those who are engaged in the conduct of the war, and noncombatant, those who take no part in carrying on hostilities. The noncombatant class includes women, children, artists, professional men and others whose occupations involve no direct participation in the war. See Martial Law; War, Carrying on; War, International Relations During. G. G. W.

NON-IMPORTATION. An attempt to put constraint upon a state or states is sometimes tried by prohibiting the importation of their goods. The disregard of the rights of American commerce by France and Great Britain in the early part of the nineteenth century led the United States, on April 18, 1806, to pass a "non-importation act" by which the importation of specified articles from Great Britain was to be prohibited after November, 1806. This act was suspended on December 19, 1806, and was not to be operative till July 1, 1807, and as the relations with Europe became less and less satisfactory the "non-importation act" was succeeded by the embargo (*see*) and non-intercourse (*see*) acts. See Embargo; Neutral Trade During Napoleonic Wars; Non-Intercourse. G. G. W.

NON-INTERCOURSE. Commercial intercourse is generally regarded as one of the fundamental rights of a state. Non-intercourse is a means of constraint which may be resorted to to obtain reparation for injuries or withdrawal of restrictions.

In 1809, 1810 and 1811 acts were passed by the United States Congress forbidding the entrance to American ports of British or French public or private vessels, or the carrying on of commerce. See Commerce, International; Embargo; Neutral Trade, Principles of; Non-Importation. G. G. W.

NON-INTERFERENCE WITH SLAVERY. The designation of the political policy evolved in the course of the debates over the Wilmot Proviso (*see*), which held that Congress should refrain from deciding the question of slavery in the territories, leaving the issue to be determined either by the localities concerned or by constitutional construction; also called non-intervention. This policy later became known as the doctrine of popular sovereignty. See Popular Sovereignty; Slavery Controversy. M. M. Q.

NON-PARTISAN POLITICAL ORGANIZATIONS. Non-Partisan Activities of Government.—Certain lines of government business have been by common consent regarded as non-partisan. Such, usually, is public education, which is protected from partisan influence by the placing of school elections on different dates from other elections. The belief that city government is also properly non-partisan has led to the fixing of special dates for city elections, with the result that in small cities and towns local government is to a large extent non-partisan. The commission form of government is advocated as a means of bringing about a similar result in large cities. The belief that the judiciary should be non-partisan finds expression in both state and party legislation, as, for instance, in occasional party rules that commit the nomination of judges to the bar. In a less degree nearly all state and local business lacks any direct relation to party issues. Many organizations have, therefore, arisen with the purpose of limiting the field of party control.

Some such organizations are even anti-partisan and oppose every form of party government. These take the Swiss as a model to illustrate the possibility of developing a successful democracy in which party government is unknown. In Switzerland the town meeting in local government and the small canton, the referendum and the popular initiative in large cantons and the general government, furnish the means of settling questions at issue. The so-called parties are simply associations to promote certain interests. Even if a party secures a majority in a legislature it does not govern. Should its members attempt to control legislation or administration it would at once be discredited. The whole machinery of government is distinctly non-partisan. Such an ideal is in the minds of some of those who are trying to introduce into the United States the initiative and the referendum. The National Direct Legislation League is not simply non-partisan but anti-partisan in spirit. Farmers and wage-earners through their national organizations also support the movement for direct legislation, partly because it promises relief from party rule.

Associations of Citizens.—A special group of non-partisan organizations is composed of cit-

izens' associations, citizens' unions, good government leagues, municipal voters' leagues, committees of seventy or of one hundred, etc. Most such associations propose no distinct change in the party system. Recognizing present means, they propose to secure from the existing organs of government better results. They are non-partisan in the sense of including men of all parties, or those associated without reference to party. Many of these associations, such as the Philadelphia Committee of One Hundred, are temporary, being designed to correct special abuses or to meet an emergency. Others form definite and permanent adjuncts to party government.

Perhaps the best illustration of the latter class is the Municipal Voters' league (*see*) of Chicago. At the time of its organization in 1896 only two of the sixty-eight members of the city council were believed to be honest. A committee of the league made a scientific study of the situation, carefully recording the votes of the members of the council during their term of office. When the time for city election approached, these records of the votes of candidates for reëlection were published. Councilmen were classified as honest men and "gray wolves," and the latter were marked for slaughter in the city press. The movement so won the confidence of the voters that in a great majority of the wards a "gray wolf" could not be elected. The league acts as a publicity committee; it presents its platform to each nominee for office with the request that he sign, alter and sign, or reject it, and it publishes the results of the test. The success of such a league depends entirely upon its impartial character. The committee is equally sympathetic and equally severe towards men of all parties. Any party or candidate furnishing a clear record has its support, or, rather, is free from its attack.

The policy of the Chicago league has not been to enter actively into political campaigns but, rather to stand apart as a civic censor. The Citizens' Union and corresponding organizations in New York have been disposed to enter actively into city politics, to unite with other independent, non-partisan movements in the support of special candidates or in the nomination of a citizens' ticket, or even to join the minority party, as in 1901 when it elected Seth Low as mayor. Owing to the fact that the two parties are very evenly divided in Chicago the work of the Municipal Voters' League has been much more successful than that of the Citizens' Union; but the difference may be due less to diverse methods than to other circumstances.

In Cambridge, Massachusetts, the Library Hall Association was for many years influential in municipal politics. After party nominations had been made the association met, discussed the candidates and selected its nominees, sometimes adding new candidates of its own. The association finally disappeared and was replaced by a Non-Partisan Municipal Party with a regular organization.

The National Municipal League, organized in 1894, is intended to supplement and direct local municipal leagues. It serves as a clearing house for the collection and dissemination of civic experience. Its annual meetings and its reports are a mine of valuable information to the reformer and the student of political science. Holding in many respects a similar position, though originating in a different way, is the National Civic Federation, organized in 1901. This grew out of conflicts between labor and capital, yet, like the National Municipal League, it is disposed to enlarge the field of its operations and furnish a meeting place for a variety of reform movements. The Civic Federation is non-partisan, not in any special sense, but as are practically all reform movements, political, industrial and social. The Civil Service Reform League is probably the best example of national non-partisan organization that has been successful in persuading both parties to adopt its tenets.

Strength and Weakness of the Reforms.— The fact that such efforts as these spring up in all parts of the country shows the vitality of reform sentiment, and indicates the desire for good government in the heart of the average citizen. The failure to secure and render permanent the sort of government sought is less significant than the attempts made. Many influences tend to detract from the power of reform. Political inertia is perhaps the strongest. By great effort the reformers may carry one or two elections, but the regular parties continue to hold the mass of voters through force of habit. The complete carrying out of reform policies after one successful election is rare, for the old organizations have the business in hand as the reformer, however great his enthusiasm, cannot. A complete organization extending throughout a city cannot be built up in a day. The Chicago Municipal Voters' League seems to have achieved the greatest success, because with a comparatively small following it can swing the deciding votes from one party to the other. The large number of objects sought and the cross purposes of reformers who seem unable to unite on one policy furnish great obstacles to success. Through lack of unity and of perfect organization they fail. Finally, as Jane Addams has pointed out, the reform organization may be injured by groups of "supporters" who clamorously join the movement with no other purpose than to make their votes bring more from the machine when they decide to sell out.

See Fusion; Independent Movements in Politics; Municipal Voters' League; Reform Movements, Political; Third Parties; Voting, Independent.

References: National Municipal League; *Reports;* National Civic Federation and Na-

tional Direct Legislation League, *Reports*; F. W. Dallinger, *Nominations for Elective Office* (1897), ch. x; H. E. Demming, *Government of Am. Cities* (1909); F. J. Goodnow, *City Government in United States* (1904), 130–136; F. H. Scott, "Municipal Situation in Chicago" in Detroit Conference for Good City Government, *Proceedings, 1903*, 140; for Library Hall Association see *Municipal Affairs*, IV (1900), 363; C. A. Beard, *Am. Government and Pol.* (1910), 703–705. JESSE MACY.

NON-RESISTANT. The term used by persons who either denied the rightfulness of human government of any kind, or who took the ground, later defended by Tolstoi, that the use of physical force was always indefensible, and that the man of peace ought not to oppose even injustice of his neighbor or the government. A distinguished, but by no means consistent, non-resistant was William Lloyd Garrison.

See CIVIL RIGHTS; DIVINE RIGHT OF KINGS; INDIVIDUALISM, THEORY OF; LIBERTY, CIVIL; MINORITIES, RIGHTS OF. **Reference:** W. P. and F. J. Garrison, *William Lloyd Garrison* (2d ed., 1894). A. B. H.

NOOTKA SOUND CONVENTION. By this convention in 1790, previous to any claim of the United States, Spain conceded to England joint rights on portions of the western coasts of America not already occupied by Spain. These joint rights were afterward held to have passed to the United States in the Florida Treaty of 1819 (*see*); and reinforced by others on each side, occasioned the later Northwestern Boundary Controversy (*see*). The occasion for the Nootka negotiation was a conflict at Nootka Sound in 1789 between the agent of an English commercial company and a Spanish naval officer, each of whom had come to make a permanent establishment. See BOUNDARIES, EXTERIOR; OREGON; WASHINGTON. **Reference:** W. R. Manning, "Nootka Sound Controversy" in Am. Hist. Assoc., *Report, 1904*, 281–478; with bibliography. W. R. M.

NORMAL SCHOOLS, PUBLIC. See SCHOOLS, PUBLIC, NORMAL.

NORTH AMERICA. This continent has an area of about 8,000,000 square miles, being much smaller than Asia or Africa, but much exceeding in size each of the remaining continents. It lies more largely in the north temperate zone than in any other, and is separated from Europe by the narrower of the two great oceans. It was thus brought into relations with the modern center of exploration, civilization and commerce.

The Cordilleran highlands in the west consist of mountains of Alpine altitudes with vast intermontane plateaus. Except in the high mountains and along the north Pacific coast much of this region is arid. It is adjacent to a wide ocean and opposite countries of late, or retarded development. It has almost no coastal plain, the mountains from Alaska to Central America occupying the margin of the land. The Appalachian highlands include several mountain ranges of moderate altitude and of various geological ages, and on the west of these mountains the Appalachian plateau under various local names stretches from the Hudson valley to central Alabama. Similar old highlands occupy eastern Canada. These eastern highlands are broken by low passes, such as the Mohawk and St. Lawrence valleys. There are also on the east, from the maritime provinces to the Gulf of Mexico, fertile and often wide lowlands, with many deep indentations, tidal rivers, and safe harbors. The passes make the interior of North America, from the central Mississippi region to the basin of the Saskatchewan, tributary to the Atlantic and most of the plains and prairies of the United States and Canada belong to the hinterland of New York, Philadelphia, Baltimore, Boston, and Montreal.

The central plains are, however, so rich in soils and in coal and are so favorable for railway construction and for trade by the Mississippi and St. Lawrence waters, that they are attaining a vast development of their own and are becoming less dependent upon the cities and interests of the Atlantic coast. This is illustrated by the growth of Chicago, and other north central cities of the United States, and by the development of Winnipeg in Canada.

See PHYSIOGRAPHY OF NORTH AMERICA; RESOURCES OF NORTH AMERICA.

References: I. C. Russell, *North America* (1904); W. M. Davis, "North America" in *International Geography* (2d ed., 1900), 664–678. ALBERT PERRY BRIGHAM.

NORTH ATLANTIC FISHERIES ARBITRATION. The controversy which had for many years occupied the governments of the United States and Great Britain in regard to the North Atlantic fisheries (*see* NEWFOUNDLAND FISHERIES DISPUTE) was at length, by a special agreement of January 27, 1907, referred to arbitration. The particular subject submitted was Article I of the treaty between the United States and Great Britain of October 20, 1818. Seven questions were submitted to a court of arbitration at The Hague, which assembled on June 1, 1910, and rendered its decision on September 7, as follows:

(1) Great Britain had the right to make regulations, as "the liberty to take fish is inherent to the sovereignty of Great Britain," but such regulations must be "equitable and fair as between local and American fishermen" and "the reasonableness of any such regulation, if contested, must not be decided by either of the parties, but by an impartial authority."

(2) American fishermen might employ aliens as members of their fishing crews though such employment would give them no benefits or immunities under the treaty.

(3) American fishing vessels should report if reasonably convenient opportunity exists; though they should not be subject to "purely commercial formalities of report, entry and clearance at a custom-house, nor to light, harbor or other dues not imposed upon Newfoundland fishermen."

(4) Entrance of American fishermen "for shelter, repairs, wood and water" should be on the grounds of hospitality and humanity and such entrance should not subject them to "light, harbor or other dues."

(5) "In case of bays the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the three marine miles are to be measured following the sinuosities of the coast" (*see* HEADLANDS THEORY). A ten mile width is, however, proposed for certain bays.

(6) "American inhabitants are entitled to fish in the bays, creeks and harbors of the treaty coasts of Newfoundland and the Magdalen Islands."

(7) Fishermen "cannot at the same time and during the same voyage exercise their treaty right and commercial privileges."

See GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; NEWFOUNDLAND FISHERIES DISPUTE; WATER BOUNDARIES.

References: *Am. Journal of Int. Law*, Oct., 1910, 948–1000, Jan., 1911, 1–31; *Parliamentary Papers Relating to the North Atlantic Coast Fisheries* (1910); W. M. Malloy, *Treaties and Conventions, 1776–1909* (1910), I, 631–847, for texts of treaties.

GEORGE G. WILSON.

NORTH CAROLINA

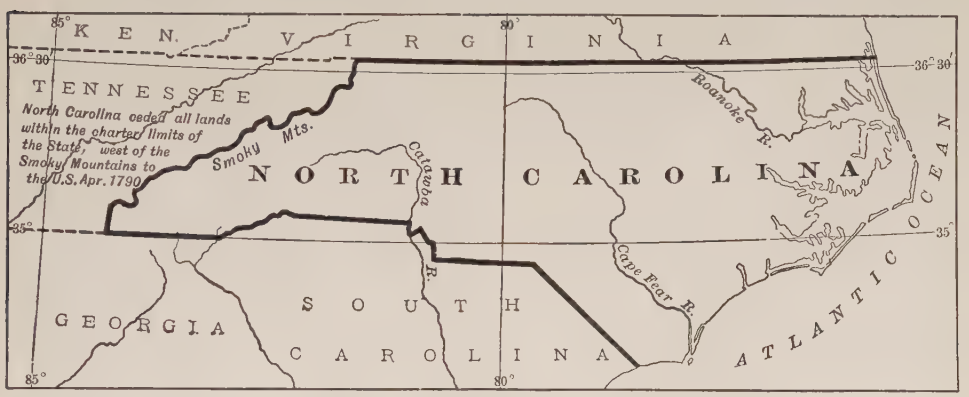
Settlement.—The first permanent settlement in what was later to become North Carolina was made, perhaps, as early as 1650, on the Albemarle Sound. These settlers came from Virginia. They were English, as were most of the colonists who came during the colonial period. A few Swiss and Germans established a settlement near Newbern early in the eighteenth century; and during the last twenty-five years of the province Germans and Scotch-Irish came in considerable numbers to the middle parts.

Colonial Government.—The government was that of the Lords Proprietors until 1729, and that of the English crown from 1729 to early in 1775. The proprietors had, for their direct agent, a governor in North Carolina, except for the period 1691–1712, when this settlement was under a deputy-governor, appointed by the governor of Carolina, who resided in the southern settlement. There was, as an adjunct to the governor, and as the upper house of the assembly, a council—a small body which represented the interests of the proprietors or the Crown. The governor and the council almost without exception, had the proprietors' or the Crown's point of view, and were consequently often opposed to the lower house, which was always representative of the colonists. The members of the house were always colonists and sympathized with the view-point and wishes of the colonists as a whole. In addition to the executive and legislative departments, there were the regular courts.

Formation of the State Constitution.—The colonists had for nine years claimed more and more rights and privileges, especially in matters of public finance and justice. They, in spite of the protests of the governor, held a provincial congress on August 25, 1774. This practically became at once the source of government for the province. The colonists, through another provincial congress, created committees of safety and government, local and provincial, and provided for the prosecution of the war. A constitutional convention was held in November–December, 1776, to formulate a fundamental law, and on December 18, 1776, a constitution was adopted and went into immediate effect. This provided for a general assembly elected annually, the really vital part of the new government; it should elect the governor and other executive officers, and the judges. North Carolina was now in law an independent state, with all its powers of government vested fundamentally in the general assembly. The legislature quite readily instructed the delegates to Congress to sign the Articles of Confederation (*see*). Accordingly, the Articles were signed on behalf of North Carolina on July 21, 1778.

Adoption of the National Constitution.—When the war was over, North Carolina was inclined to fall back upon the spirit of individualism and purely local government. There was, in fact, a strong disposition to make all government, especially that of the union, as little effective as possible. This disposition was manifest in the convention which was called to consider the ratification of the Constitution of the United States; on August 2, 1788, the convention by 184 to 84 voted not to ratify the Constitution. Another convention, however, ratified it, on November 21–22, 1789. It was now clear that the desired changes in the Constitution would soon be made, and the more conservative faction was in control in North Carolina politics.

Constitutional Changes (1835).—The fact that no amendments were made to the constitution of 1776 until 1835, proves the conservatism of North Carolinians, as well as the power which the first constitution placed in the eastern counties. The constitution provided for one senator and two members of the house from each county. This meant that the small eastern counties could easily hold the political power over the large western counties. When the western counties came to possess a denser population, they did not enjoy fair representation in the legislature, and, through it, in the executive and judicial departments. The east and the west comparatively soon after 1776 became vigorous, if not bitter, opponents of each other. The east was Anti-Federal or Democratic; the west, Federal or Whig. The east had important waterways; the west had practically no cheap or effective means of transportation, and was eager that the state take a leading part in internal improvements, especially in the building of railways. From 1820 to 1835 the pressure for a constitutional convention grew, and a convention was held in June–July, 1835. The amendments of the constitution were fundamentally important. They provided for a senate of 50, elected biennially from districts, which should be formed every twenty years by the assembly, and for a house of 120, elected from the counties according to population. They provided for the election of the governor biennially, by the people instead of by the assembly. The property qualification was changed only for the member of the house; he was now required to possess no land; by the constitution of 1776, at least 100 acres.



Boundaries of the State of North Carolina

Secession and Reconstruction.—The Whigs were in control of the political power from 1835 to 1850 and internal improvements constituted the chief political issue. The Democrats were in the ascendency from 1850 to 1860, and slavery became a prominent political issue. The idea of secession came to the front as early as 1854. A proposition to call a secession convention was voted down by the people by a majority of 195 as late as February 28, 1861. The call of President Lincoln, on April 15, for two regiments from North Carolina changed the situation. On May 20, 1861, North Carolina went out of the Union. The capital was captured by General Sherman on April 13, 1865, and the state was under a military government until May 29, 1865, when Governor Holden, who had been appointed by President Johnson as provisional governor, undertook the task of reconstructing the state. A convention, held in October, 1865, declared that secession had never legally existed, and passed an ordinance against slavery. This convention, in an adjourned session, in May, 1866, reconstructed the constitution (that of 1776 and 1835 was revised in 1861), but this was rejected by a vote of the people. Congress refused to accept the reconstruction of President Johnson, and in March, 1867, North Carolina was again placed under a military government. A new constitutional convention was called by an election in November, 1867, and was held early in 1868. A new constitution was adopted in March, 1868, by the convention, and was ratified by the people. This was approved by Congress on June 25. An assembly met July 1, 1868, and ratified the Fourteenth Amendment; and, on July 11, North Carolina was proclaimed again legally in the Union (*see* Reconstruction).

Constitutions.—The most important points in the constitution of 1776 and of its amendments in 1835 have been noted. That of 1868 contained a number of important modifications. It abolished all property qualifications for the governor and the members of the senate, and established manhood suffrage. The term of the governor was increased from two years to four and the other executive officers were to be elected directly by the people. The supreme court was increased from three to five judges, and these were to be elected by the people for a term of eight years, instead of by the assembly. The superior courts were enlarged to 12, and

their judges were to be elected by the people, for a term of eight years. The right to secede was denied. The constitutional convention of 1875 formulated a new constitution, though it was in no important points essentially different from that of 1868. The supreme court judges were reduced to three, by a constitutional amendment in 1887 they were again made five, and the superior court judges nine. The number of the superior courts was, however, left to the legislature to change, and at present it is 20. Suffrage was made upon the basis of manhood and the payment of taxes.

The basis of suffrage was changed by a constitutional amendment in 1900. It was now required that the voter should read and write, in the English language, the constitution of the state. One important exception was, however, made to this limitation. All males, who on January 1, 1867, could vote in any state in the United States, and lineal descendants, were allowed to register and vote, as long as they did not disqualify themselves, without any educational qualification, provided they should register before December 1, 1908 (*see* GRANDFATHER'S CLAUSE; NEGRO SUFFRAGE).

Present Government.—The chief points in the present constitution have been given, and it remains merely to tell of the government at work. The governor, who for many years was largely a representative of the general assembly, rather than of the people, has come to be the leader of his party, and of the state in actual operation. Though he has no power to veto any legislative bills, his recommendations of legislation have considerable influence (*see* VETO POWER). The legislature, which holds regular biennial sessions, and which is the final source of all laws, consists of 50 senators and 120 representatives. This body has been a comparatively conservative one. It has been slow to increase taxes and to make effective provisions for the assessment of property; it has failed thus far to create a separate body of tax commissioners. It has been slow to expend the public funds, which have been relatively small, for education and internal improvements. It has for the most part enacted little radical legislation. The supreme court, now of five members, has remained the court of appeal and review, and it has usually kept pace with its business. The superior courts, now 20 in number, each with a judge and a solicitor, perform the larger tasks in the judicial system. They have not, for the most part, been able to maintain a reasonably up-to-date record; their business has become too large for their present equipment. Lynching, which has been comparatively common, has in part been due to the lack of efficiency of the superior courts and of the county executive—the sheriff and his deputies.

Local Government.—The county, with its units—the townships—has always been an important part of North Carolina government. Its board of commissioners and its school and highway committees or commissions have been important bodies, with both legislative and executive functions. The superior court of the state always operates through the county. The county's most important officer is its clerk of the superior court. The justice of the peace exercises his very limited civil and criminal jurisdiction within his township. He has the power to "bind over" to the superior court. He may decide in criminal cases, the punishment of which does not exceed a fine of $50.00 or an imprisonment of thirty days, and in contract cases, the amount of which is not over $200.00. The town government of North Carolina is a much more modern institution. The legislature by a charter grants the right of municipal government to the town, and provides for its machinery. This has until recently had a mayor and aldermen; now there are four instances of the commission (*see*) government. The creation of the recorder's court, in a number of the larger towns, has done much towards a more efficient enforcement of justice, as well as toward relief of the superior courts.

Political Parties.—Government in North Carolina, whether state or local, has been largely partisan; it has for many years been either Democratic or Republican. From 1876 to 1896 the Democrats were in control of the political power in the executive, legislative, and judicial departments, in the counties and towns, as well as the state. The Republicans were the masters 1868–76, and again 1896–1900. Since 1900 the Democrats have been in the ascendency. The Democratic majority for the presidential electors has been as follows: about 33,000 in 1892, 19,000 in 1896, 24,000 in 1900, 41,000 in 1904, 22,000 in 1908, 75,000 in 1912.

Population.—There were 393,751 people in North Carolina at the first census (1790), of whom 105,547 were negroes. By 1850 it had grown to 869,039 (316,011 negroes), by 1900, to 1,893,810 (624,469 negroes), and by 1910, to 2,206,287.

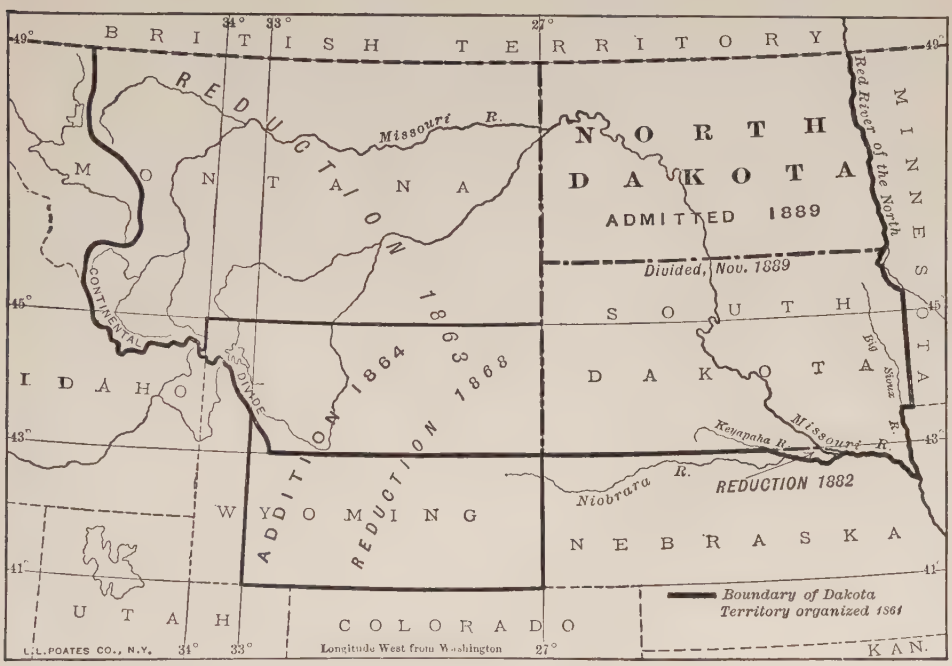
See RECONSTRUCTION.

References: C. L. Raper, *North Carolina* (1904); E. W. Sikes, *Transition of North Carolina from Colony to Commonwealth* (1898); C. C. Weaver, *Internal Improvements in North Carolina Previous to 1860* (1903); H. M. Wagstaff, *State's Rights and Political Parties in North Carolina, 1776–1861* (1906); J. G. de R. Hamilton, *Reconstruction in North Carolina* (1906); F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2743–2843.

CHARLES LEE RAPER.

NORTH DAKOTA. The first permanent settlement in the state was made about 1819, at Pembina, by some Canadians under the leadership of two Catholic priests, Provencher and Dumoulin. In 1850, the population of this

portion of the territory is reported in the United States Census as 1,116, mostly half-breed hunters and trappers, a transient population of Canadian origin, which is still numerously represented in the northern counties of the state. The Sioux outbreak of 1862, and the consequent abrogation of all land treaties by the Federal Government with the Indians involved in the war, cleared large tracts of land of the Sioux and destroyed their claims to the soil. In the following decade, the Indians were placed on reservations. The population of northern Dakota increased from approximately 2,400 in 1870, to 36,909 in 1880; in 1910 it was 577,056. A



Boundaries of the State of North Dakota, Showing Territorial Changes

joint boundary commission, 1872–4, fixed exactly the international boundary line on the north. By 1873 the territory had been reduced so as to include only the present states of North and South Dakota (*see*).

The federal Enabling Act, approved February 22, 1889, provided for the admission of North Dakota, South Dakota, Montana and Washington, with the usual restrictions on their proposed constitutions. Provision was made for a permanent school fund for the state by setting aside sections 16 and 36 of every township, which could not be sold for less than $10.00 per acre, nor leased for a longer term than five years. This fund was further increased by adding to it five per cent of all proceeds from the sale of public lands after the state was admitted. Besides this, 676,080 acres of the public domain was granted to the state, chiefly for educational purposes, and the income derived from funds arising from the sale of this land, at not less than $10.00 per acre, was to be used for the support of certain designated institutions. All mineral lands are exempted from the operation of this act.

The state constitutional convention was held at Bismarck from July 4 to August 17, 1889. The constitution drafted at this time was adopted. The provision for the prohibition of the sale or manufacture of intoxicating liquor was submitted to a special vote and was passed. The constitution is unusually long, containing much that is ordinarily included in statute law; it contains provisions for securing the property rights of debtors and married women, for preventing the exchange of corporation black-lists and for fixing the age limit of child labor. The debt limit as provided for in the constitution is $200,000, a provision which has frequently stood in the way of necessary and beneficial legislation. An amendment provides for the taxation of public service corporations by the state board of equalization, consisting of the governor, auditor, treasurer, attorney general and commissioner of agriculture and labor.

The legislative department consists of a senate of 49 members, holding office for four years, and a house of 102 members, elected for two years. The executive department consists of twelve officials, elected for two years, and a large number of boards or commissions, filled ex-officio or by appointment for varying terms. A pure food commissioner is provided

for by a recent enactment along a new line of state control. The state supreme court consists of five judges, chosen for six years. There are also ten district judges, chosen for four years. Two systems of county government are provided by the constitution, that by county commissioners, and that by the chairmen of the township boards. In cities of 2,000 population and over, the commission plan of city government has been made optional by a recent law.

Politically, the state is Republican, but at various times in its history, a split in the dominant party has resulted in the election of state and federal officials from other parties. In 1892, during the period of Populist success in the West, a fusion governor was chosen, and from 1893 to 1899 the state was represented by a Democratic United States Senator. In 1906, a Democratic governor was chosen and he was elected for the third term in 1910. One of the prominent issues during the first years of his administration was the enforcement of the state liquor laws in those parts of the state where prohibition was practically a dead letter. The passage in 1907 of an amended primary election law has made another prominent issue. The law has not been all that was hoped for it, and while the principle is universally conceded, its general effect in the state elections so far as its form is concerned has not yet placed it beyond the stage of experiment. Up to 1912 the state had a Democratic governor with the other executive officers of the opposing party, and a Republican legislature, in which the senate was controlled by one faction and the house by the other. This condition of affairs had given an unfortunate prominence to the question of official patronage, and at times had been detrimental to the best interests of the state, though it had been accompanied by not a little beneficial legislation and some wholesome enforcement of state laws. In 1912 the state cast its vote for the Democratic presidential candidate, but elected a Republican governor and legislature.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: F. N. Thorpe, *State Constitutions and Charters* (1909), V, 2845–2896; State Historical Society of North Dakota, *Collections*, I, II, III, IV (1913); J. E. Boyle, *Government of North Dakota* (1910).

O. G. LIBBY.

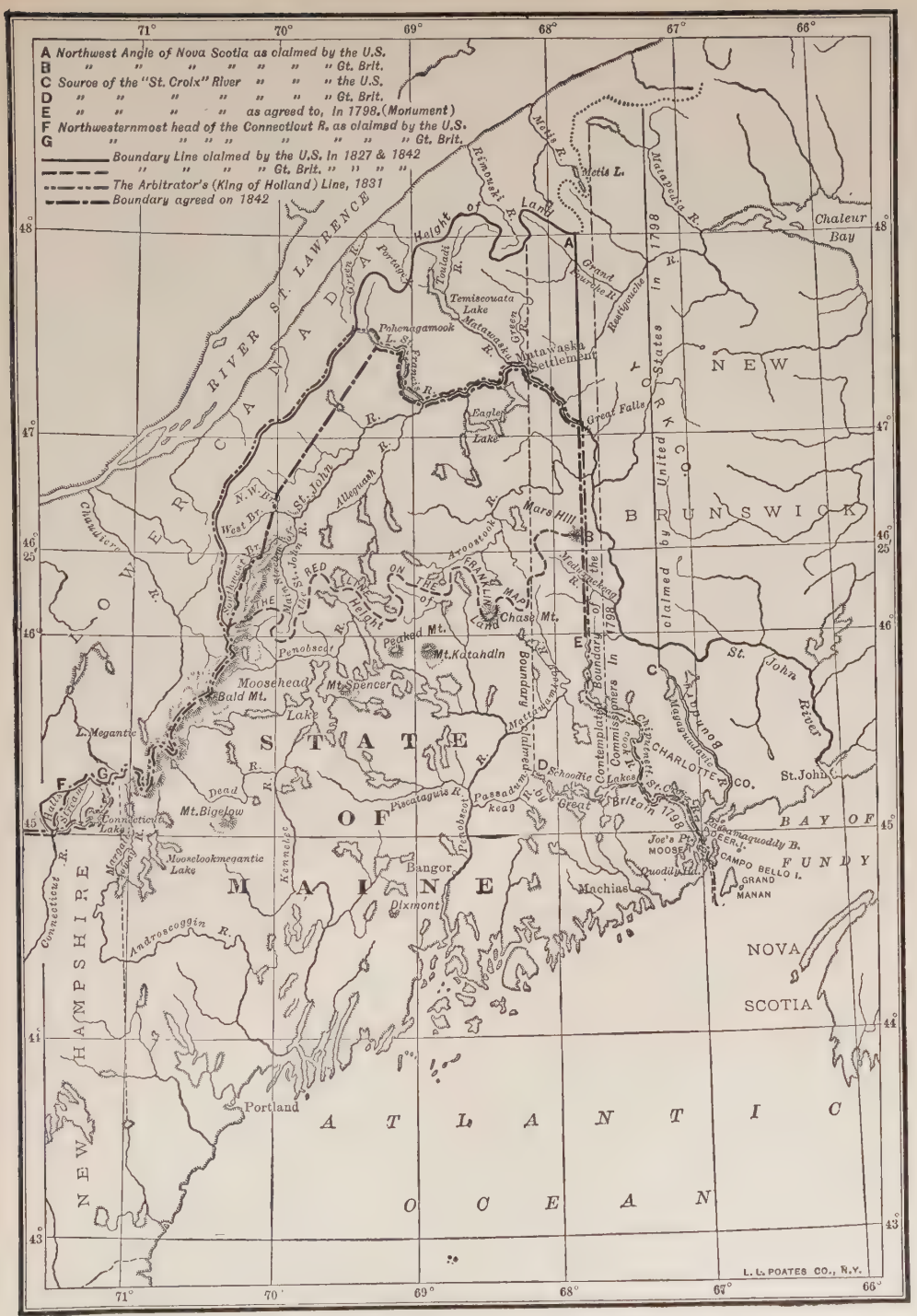
NORTH GERMAN CONFEDERATION. See GERMANY, FEDERAL ORGANIZATION.

NORTHEASTERN BOUNDARY CONTROVERSY. The portion most difficult to settle of the northern boundary of 1783 was that north and east of the state of Maine, described as, "a line drawn due north from the source of the St. Croix river to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the Northwesternmost head of the Connecticut River." Which of several rivers in the vicinity was the true St. Croix was settled in 1798 by a commission provided for in the Jay Treaty of 1794. An effort was made to decide on the true highlands by a treaty in 1803 which was not ratified; and another effort, by the fruitless Monroe-Pinckney negotiation in 1807. The Treaty of Ghent of 1814 provided a commission which labored from 1816 to 1822 without deciding. In 1831 the king of the Netherlands as arbitrator could not find sufficient reason for deciding in favor of either contention, and drew a compromise line which was accepted by neither. The people of Maine and New Brunswick all but came to blows in the Aroostook War, 1838–40. After long and difficult negotiations, the present boundary was settled by the so-called Ashburton Treaty of 1842. See ASHBURTON TREATY; BOUNDARIES OF THE UNITED STATES INTERIOR; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; MAINE; MASSACHUSETTS.

References: J. S. Reeves, *Am. Diplomacy under Tyler and Polk* (1907), 1–57 and references; G. P. Garrison, *Westward Extension* (1906), 67–84, 343; J. F. Sprague, *Northeastern Boundary Controversy* (1910); J. B. Moore, *Inst. Arbitrations* (1898), I, 161; Albert Gallatin, *Memoir on the Northeastern Boundary* (1843).

W. R. M.

NORTHERN SECURITIES CASE. An action in equity was instituted in the proper federal court in Minnesota to enjoin the Northern Securities Company from exercising the power which it had assumed under its charter of controlling two naturally competing lines of railroad in each of which as a holding company it had acquired a majority of the stock (Northern Securities Co. *vs.* United States, 1904, 193 *U. S.* 197). There was a decree against the company, granting substantially the relief prayed for by the United States; and on an appeal by the company to the Supreme Court it was held that while the holding company was not directly engaged in interstate commerce it was in fact formed for the purpose of carrying out a scheme to so manage the two railroad companies as that they should cease to be competing carriers in interstate commerce and that under the Sherman Anti-trust Act (*see*) it was a combination in restraint of such commerce and illegal. Four of the justices concurred in the view that any combination extinguishing competition between otherwise competing railroads engaged in interstate commerce was illegal under the Sherman Act, and another justice concurred in the result upon the ground that although the act was only directed against


A Northwest Angle of Nova Scotia as claimed by the U.S.
B " " " " " " " Gt. Brit.
C Source of the "St. Croix" River " " " the U.S.
D " " " " " " " Gt. Brit.
E " " " " as agreed to, In 1798. (Monument)
F Northwesternmost head of the Connecticut R. as claimed by the U.S.
G " " " " " " " Gt. Brit.
Boundary Line claimed by the U.S. In 1827 & 1842
" " " " Gt. Brit. " " " "
The Arbitrator's (King of Holland) Line, 1831
Boundary agreed on 1842
RIVER ST. LAWRENCE
CANADA
NEW BRUNSWICK
STATE OF MAINE
NEW HAMPSHIRE
NOVA SCOTIA
ATLANTIC OCEAN
BAY OF FUNDY
Metis L.
Metis R.
Matapedia R.
Chaleur Bay
Height of Land
Restigouche R.
Grand Fourche R.
Temiscouata Lake
Pohenagamook L.
Matawaska Settlement
Great Falls
Eagle Lake
Mars Hill
Aroostook R.
Chase Mt.
Mt. Katahdin
Peaked Mt.
Penobscot R.
Moosehead Lake
Mt. Spencer
Bald Mt.
L. Megantic
Mt. Bigelow
Connecticut Lake
Moosilookmegantic Lake
Bangor
Dixmont
Machias
Portland
Schoodic Lakes
Great Britain
Joe's Pt.
Campo Bello I.
Grand Manan
St. John River
St. John
Chaudiere R.
Allegash R.
St. John R.
West Br.
Northwest Br.
Connecticut R.
Androscoggin R.
Kennebec R.
Penobscot R.
Piscataquis R.
Passadumkeag R.
Mattawamkeag R.
Meduxnekeag R.
Aroostook R.
Matapedia R.
Restigouche R.
Metis R.
Temiscouata R.
Green R.
Portneuf R.
Dozer R.
Etchemin R.
Chaudiere R.
Mars Hill
Height of Land
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Mt. Katahdin
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Aroostook R.
Mars Hill
Chase Mt.
Peaked Mt.
Mt. Katahdin
Penobscot
Moosehead Lake
Mt. Spencer
Bald Mt.
L.

Act covers all combinations in restraint to some extent of interstate commerce or only those combinations which are unreasonable and therefore unlawful has recently been considered in other cases. See SHERMAN ANTI-TRUST ACT. E. McC.

NORTHWEST ORDINANCE. See ORDINANCE OF 1787.

NORTHWEST TERRITORY. By vote of October 10, 1780, the Continental Congress promised that any western territory that came to it should be eventually organized into republican states. To carry out this promise a territorial ordinance was passed in 1784 (*see* TERRITORY SOUTH OF THE OHIO RIVER), but no government was organized, till the Northwest Ordinance of 1787 (*see*). In the final draft, the title of Western Territory was changed to "Territory of the United States northwest of the River Ohio."

The ordinance was duly put into operation through the appointment as first governor by Congress, of Arthur St. Clair, who was the president of Congress of the Confederation when the Ordinance was adopted; he entered on his office July 15, 1788. July 26 he created the first county, Washington. Winthrop Sargent, one of the leading spirits in the Ohio Company, was made secretary. Under the first period of territorial government the governor and judges were a temporary legislature with power to adopt such laws of the original states, as were applicable, subject to the approval of Congress. Samuel Holden Parsons of Connecticut, James M. Varnum of Rhode Island, and John Cleves Symmes of New Jersey were the first judges. The first court was held September 2, 1788. The governor and judges early enacted a system of local government which had both New England and middle state features.

August 7, 1789, the Congress of the United States reënacted the Northwest Ordinance, and thence-forward the territorial officials were appointed by the President. The governor and judges from the first did not observe the prescription that they must reënact laws already made; but the legislature chose a predominance of southern and middle state features, particularly the methods of Pennsylvania, St. Clair's state. The governor successfully asserted his power to veto laws voted by the judges. When in 1799, an elective assembly was set up, Governor St. Clair denied the right of the assembly to make new counties, and therefore vetoed new bills of the first legislature, six of which were for erection of new counties. Congress sustained the assembly.

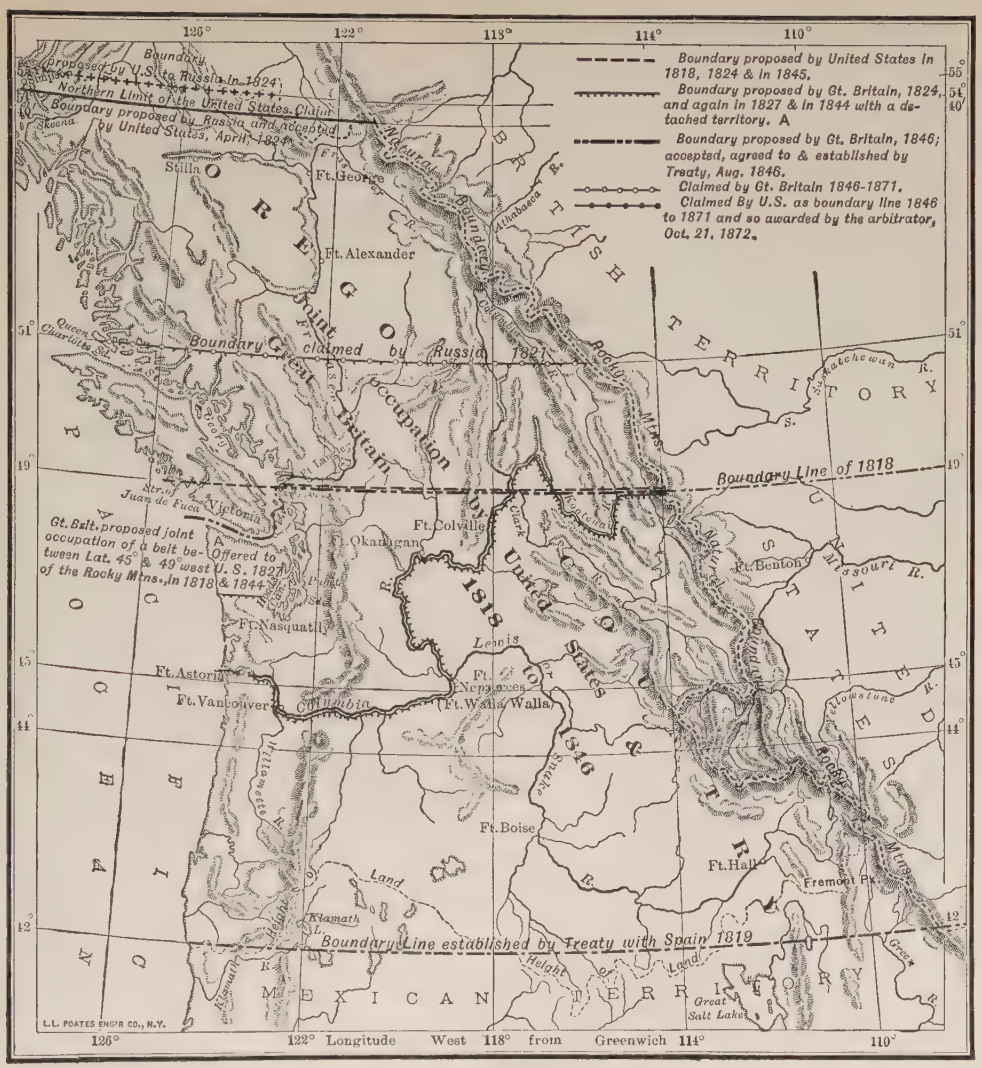
This new legislature was aided by William Henry Harrison who had now become secretary. May 7, 1800, Congress passed an act setting up a new territory of Indiana in the western part, and Harrison was made governor. St. Clair continued for the time governor of the Northwest Territory, but in November, 1802, Jefferson removed him; and shortly after the territory merged in the state of Ohio, finally admitted to the Union in February 19, 1803.

See BOUNDARIES, INTERIOR; EMANCIPATION BY STATES; ILLINOIS; INDIANA; MICHIGAN; MINNESOTA; OHIO; OHIO COMPANY; PUBLIC LANDS AND PUBLIC LAND POLICY; PUBLIC LANDS, RESERVATIONS OF; SCIOTO COMPANY, SLAVERY CONTROVERSY; TERRITORIES OF THE UNITED STATES; WISCONSIN.

References: B. A. Hinsdale, *Old Northwest* (2d. ed., 1889); T. Roosevelt, *Winning of the West* (2d ed., 1896); J. Winsor, *Westward Movement* (1897); J. M. Merriam, "Legislative Hist. of the Northwest Ordinance," in Am. Antiquarian Soc., *Proceedings*, V (April, 1888); W. P. and J. Cutler, *Life of Manasseh Cutler* (1888); M. Cone, *Life of Rufus Putnam* (1886); D. G. McCarty, *Territorial Governors of the Old Northwest* (1910); C. Meyerholz, *Federal Supremacy over the Territories of the U. S.* (1906); Histories of Ohio, Indiana, Illinois, Michigan and Wisconsin; C. Moore, *The Northwest under Three Flags, 1635–1796* (1900). A. B. H.

NORTHWESTERN BOUNDARY CONTROVERSY. Whatever rights Spain retained by the Nootka Sound Convention (*see*) to that portion of the northwest coast north of 42° passed to the United States in the treaty of 1819. America had already acquired several other bases for claiming the territory. In 1792 Captain Gray discovered, explored and named the Columbia river; in 1805 Lewis and Clarke reached the sources of the Columbia river, and descended to its mouth; in 1811 the fur-trading settlement at Astoria was formed. By treaty in 1824 Russia withdrew from the country south of 54° 40′. This left only the English and American claims. Fruitless efforts at diplomatic settlement had been made in 1806 and again in the negotiations at Ghent in 1814. In 1818 joint occupancy was agreed upon for ten years. New negotiations in 1821 and 1824 failing, the joint occupation was in 1827 indefinitely continued. In 1846 the line 49° which had been established as far as the Rocky Mountains in 1818 was continued to the middle of the main channel separating Vancouver Island from the mainland and thence to the Pacific. The dispute as to which was the main channel was settled by arbitration of the German Emperor provided for in the Treaty of Washington of 1871. See BOUNDARIES, EXTERIOR; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; RUSSIA, DIPLOMATIC RELATIONS WITH; SPAIN, DIPLOMATIC RELATIONS WITH; OREGON; WASHINGTON.

References: J. S. Reeves, *Am. Diplomacy under Tyler and Polk* (1907), 190–264; G. P. Garrison, *Westward Extension* (1906), 157–173, 343; J. B. Moore, *Digest of*



THE NORTHWESTERN BOUNDARY CONTROVERSY

Int. Law (1906), § 835, *Arbitrations* (1898), I, 196–236, R. Greenhow, *Oregon* (1844), chs. xvii, xviii; E. G. Bourne, *Essays in Historical Criticism* (1901), § 1; Travers Twiss, *Oregon Question* (1846); H. H. Banerott, *Northwest Coast* (1884), *Oregon* (1886), *Washington, Idaho and Montana* (1890); W. MacDonald, *Select Documents* (1897), Nos. 70, 74; A. B. Hart, *Foundations of Am. Foreign Policy* (1901), §§ 26, 67; W. I. Marshall, *Acquisition of Oregon* (1911). W. R. M.

NOTES, UNITED STATES. A term applied to the various forms of paper currency issued by the Federal Government of which the principal ones are: (1) treasury notes, not legal tender, commonly issued in large sums or denominations, especially in 1812–1814, 1837–1840, 1861–1868; (2) legal tender notes, first issued in 1862, and still in circulation; (3) fractional currency, issued during the Civil War, no longer in circulation, all that was presented having been redeemed; (4) silver certificates, secured by coin or bullion in the Treasury, first issued in 1878; (5) gold certificates, secured by gold coin or bullion, first issued in 1865; (6) silver notes, issued under the Sherman Act of 1890, made legal tender at their face value and redeemable in "coin"; (7) national bank notes, printed by the government for the banks since 1862, and guaranteed by bond deposits held in the treasury. See BILLS OF CREDIT; CURRENCY, CONTINENTAL; CURRENCY, FRACTIONAL; REDEMPTION OF CURRENCY; GOLD CERTIFICATES; INFLATION; LEGAL TENDER CONTROVERSY. References: J. J. KNOX, *U. S. Notes* (1880); D. R. Dewey, *Financial Hist. of the U. S.* (1903, 3d ed., 1907)

passim, Hist. of Banking in the U. S. (1900); Horace White, *Money and Banking* (1896, 2d ed., 1902); *Am. Year Book, 1910*, 340, and year by year; bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 237, 243, 252, 262. A. B. H.

NOVA SCOTIA. One of the three maritime provinces of Canada (*see*). It comprises the peninsula lying southeast of New Brunswick (*see*), and has an area of 21,428 square miles. Its population at the last official census (1911) was 492,338 an increase of only 33,000 over the population of a decade preceding. Nova Scotia was the site of the earliest European settlement in all the territory now comprised within the Dominion of Canada. In 1604 the Sieur de Monts received a charter from Henry IV of France, granting to him the territory of Acadia which, by the terms of the charter, comprised the whole Atlantic coast line from Florida to Labrador. With the coöperation of Champlain settlements were established in the new territory, particularly at Port Royal, now Annapolis. In 1607 De Monts lost his charter but the work was in time taken up under new grants. England, however, also claimed this territory, and, during the next hundred years, it was the scene of an intermittent struggle between the French and English, terminating in the cession of Acadia to England by the Treaty of Utrecht (1713). France, however, retained Cape Breton (then known as Ile Royale) and Prince Edward Island (then known as Ile St. Jean). On the former island France established her formidable fortress of Louisburg, while England, some years later, established fortified headquarters at Halifax. In 1755 came the famous expatriations of the Acadians or French settlers from the region of the Bay of Fundy, and in 1763, at the close of the Seven Years War, Cape Breton and Prince Edward Island were included in the territories finally ceded to England.

Some few years preceding the final cession, representative government had been established in Nova Scotia and the first parliament, consisting of twenty-two elective members, had convened at Halifax in 1758. The province then included what is now New Brunswick, and, after the Treaty of Paris, Cape Breton and Prince Edward Island were also incorporated within its jurisdiction. After the close of the Revolutionary War, however, the population was greatly increased by an influx of Loyalists from the thirteen states, and in 1784 New Brunswick and Cape Breton were given rank as separate provinces, the latter being reincorporated with Nova Scotia, however, in 1820.

Like the other provinces, Nova Scotia underwent during the first half of the nineteenth century the long struggle for responsible government, which culminated successfully in 1848 owing chiefly to the perseverance of the Reform party under the leadership of Joseph Howe. In the movement for confederation Nova Scotia took a prominent part and became one of the "charter members" of the Dominion of Canada in 1867.

The province of Nova Scotia is represented in the Dominion Parliament (*see* PARLIAMENT, CANADIAN) by ten senators and eighteen members of the house of commons. Its provincial government consists of a lieutenant-governor, appointed for a five-year term by the governor-general of the Dominion; an executive council or ministry, chosen by the lieutenant-governor, but responsible to the legislative assembly; a legislative council of twenty-one members, appointed for life by the lieutenant-governor on the advice of his ministry, and an elective legislative assembly of thirty-eight members. From time to time demands have been made to abolish the legislative council, but these have been unsuccessful. The province receives, under the provisions of the Act of Confederation, an annual subsidy from the federal treasury. The provincial capital is at Halifax.

See CANADA; CANADIAN PROVINCES.

References: J. B. Calker, *Hist. and Geography of Nova Scotia* (1878); W. Kingsford, *Hist of Canada* (1894), VII. W. B. M.

NUISANCES, ABATEMENT OF. The abatement of common nuisances means the removal of conditions which are obnoxious to public health, safety, morals or order or to other public rights, and which are consequently contrary to law. The most familiar and usual instances of a common nuisance are encroachment upon public highways, imminently dangerous structures, disorderly houses, infected articles or animals, vermin or pests, unwholesome food, and obscene publications. The abatement may be ordered by a court after a conviction upon an indictment or information for maintaining the nuisance, or it may be undertaken without such judgment (summary abatement). In either case the abatement must not extend beyond the suppression or removal of the illegal or obnoxious condition, so that, for instance, a house used for disorderly purposes may not be destroyed, and it has even been held that a saloon in which liquor is illegally sold may not be locked by force so as to deprive the owner of access or possession (Baldwin *vs.* Smith, 82 *Ill.* 162).

It is not uncommonly stated that any person may abate a common nuisance and there is judicial authority to support that statement. Where the question, however, has been brought to a direct issue the weight of authority seems to limit the power of summary abatement by two conditions, first that the person undertaking the abatement have a special interest or be personally aggrieved by the nuisance, and second, that the abatement be unaccompanied by any breach of the peace. These limitations

are of particular importance in determining the powers of officers to abate nuisances. No common law officer (sheriff, constable, etc.) had, as such, any greater power to abate nuisances than an individual; even for the removal of obstructions on highways the older English statutes required an order of the justice of the peace, and the power of summary abatement was conferred upon highway officers by statute only in the nineteenth century. In America statutory power of abatement is found as early as the colonial times with reference to highways (*see* ROADS) and it has been held in Wisconsin that the power belongs to highway officers at common law, but this decision was later qualified by holding that it applies only where the obstruction was wilfully placed (26 *Wis.* 546; 37 *Wis.* 84). Notwithstanding the decision referred to, the existence of the common law or inherent power of officers to abate nuisances must be considered doubtful.

Under the more conservative view, therefore, the power of an officer to abate a common nuisance should rest upon statutory authority. Such authority is commonly conferred with reference to highways, and is also found in connection with most of the other classes of nuisances above mentioned. The power to abate nuisances is also frequently found in city charters, but the power there appears as one granted to the city council and in order to be made effectual in practice, must be further delegated to administrative officers by ordinance. This is not uncommonly done in connection with safety, health, morals and public order, and specially with reference to highways. But it is not common to find either in statutes or ordinances a general power to abate unspecified nuisances of any kind whatsoever granted to officers having general executive authority like the mayor, sheriff, constable, or police.

The summary abatement of nuisances being recognized by common law, it is held not to violate the constitutional guaranty of due process of law (211 *U. S.* 306). The actual existence of a nuisance is, however, a jurisdictional prerequisite to the action of the officer, who, according to the better views, is personally liable for destroying property, which is not in fact a nuisance. The aggrieved individual has consequently his day in court, after, if not before, the invasion of his property rights, and of this day in court the legislature, it seems, cannot deprive him. There is, however, no redress either against the municipality or the state for the unwarranted abatement of an alleged nuisance.

See CONTAGIOUS DISEASES; DANGEROUS CALLINGS; GARBAGE REMOVAL; HEALTH, PUBLIC, REGULATION OF; MUNICIPAL HOUSING; POLICE POWER; TENEMENT HOUSES.

Reference: F. J. Goodnow, "Summary Abatement of Nuisances" in *Columbia Law Review*, II (1902), 203. ERNST FREUND.

NULLIFICATION CONTROVERSY

Industrial Conditions, 1820–1830.—With the westward movement of population after the War of 1812, the states of the south Atlantic seaboard underwent serious economic change. Emigrants from the older states moved into the fertile fields of the new southwest. The older sections felt the drain of population and of wealth and in some regions there was real distress. The new and fresh plantations of the southwest began to yield large quantities of cotton. With the increase of the product a fall of prices naturally ensued and this was particularly felt by the planters of the east in their competition with the owners of the unexhausted fields of the new west. The difficulty was attributed to the tariff, which may indeed have borne somewhat heavily on the producers of the great staples.

The tariff agitation in the third decade of the nineteenth century aroused the South and especially the older South to vigorous opposition. In 1827 and 1828 there was much excitement and a large element in South Carolina was already prepared for extreme measures. Dr. Cooper, President of South Carolina College, lustily preached the doctrine of free trade and declared that it was time to measure the value of the Union in comparison with the well-being of the state. South Carolina, in the past, had, on the whole, cherished sentiments of nationalism; but there were now many men ready to assert the rights of the states denounces the tyranny and oppression of the central government. The tariff acts of 1828 and 1832 drove the malcontents to a high pitch of excitement.

Calhoun's Papers.—The theory for state opposition was fully outlined by Calhoun (*see*). He had had the sympathies of strong nationalism. Though it may not be perfectly clear that he had stood for a doctrine strictly and logically in opposition to the whole doctrine of state sovereignty, it is plain that he had favored a broad and generous construction of the Constitution. In 1828 he drew up a general statement or report known as the "South Carolina Exposition," which accompanied a set of resolutions from the legislature protesting against the constitutionality of the tariff. In this "Exposition" Calhoun states and elaborates the doctrine of nullification. In later papers—"Address on the Relations which the

States and General Government Bear to Each Other" (1831) and his "Letter to Governor Hamilton" (1832)—he further presents the same theories. He wished to present a theory which, in operation, would enable a state to secure its ends without war or secession from the Union.

South Carolina Acts.—There was a strong Union party in South Carolina, and the whole state was agitated by the controversy. In spite of the persistence of the Union element, a legislature was chosen which authorized a convention to discuss the tariff laws and the remedies for the evils (1832). This convention met in November and passed an ordinance declaring the tariff laws null and void. The legislature was authorized to adopt measures for giving full effect to the ordinance; appeal from a state court to the Supreme Court of the United States was not to be allowed when the case involved the authority of the ordinance, the validity of the acts of the legislature passed to carry it into effect, or the validity of the acts of Congress. All officers were to take an oath of obedience to the ordinance and the consequent legislative enactments. Finally the ordinance solemnly declared that an effort to compel obedience to the act of Congress "otherwise than through the civil tribunals of the country" would be ground for secession. The ordinance was issued November 24, 1832. The first of the following February was fixed as the time beyond which the enforcement of tariff laws within the state should not be allowed. The convention also drew up an address to the people of the various states, announcing its principles which were in essence those already put forth by Calhoun. In obedience to the mandates of the convention, the legislature passed a series of acts to give the ordinance effect.

Jackson's Proclamation.—President Jackson issued, December 10, a proclamation, an able state paper, taking up the gage of battle and vigorously attacking the constitutional theories of South Carolina. The whole subject was of course discussed and rediscussed in Congress, but as the days went by there seemed little prospect of speedy action. Before the first of February a meeting in Charleston informally suspended the ordinance and thus a clash of authority was delayed. On the first of March two acts were passed by Congress, one providing for the gradual lowering of the tariff; the other, the so-called "force-bill" (*see*), for the enforcement of the laws.

The Co-States.—In the meantime the "co-states," to use the words of the ordinance, responded, and the responses brought South Carolina small comfort. A few of them condemned the tariff laws; but even in Georgia, which had been much excited over the subject of state rights, the legislature was not ready to adopt the doctrine of nullification. Alabama declared nullification unsound in theory, dangerous in practice, and essentially revolutionary. Not a single state passed resolutions upholding the doctrine. Maine announced a principle of state rights which fell short of state sovereignty, and Virginia pointed to resolutions of an early day (*see* VIRGINIA AND KENTUCKY RESOLUTIONS) as containing the true theory on which the Union was based.

Compromise.—South Carolina stood alone; but the compromise tariff gave her opportunity to retire gracefully, perhaps even to claim the honor of triumph. Spurning the force bill, she accepted the compromise tariff act; the convention which had been summoned to reassemble even before Congress finally acted, met in March and rescinded the ordinance but proceeded to declare the force bill unconstitutional. Thus nullification ended; the authority of the central government had been asserted; the states had denounced the theory; but South Carolina had secured, unaided by the "co-states," an important alteration of the tariff laws.

Theory.—The theory of nullification rests on the preliminary theory of state sovereignty (*see*). The states having entered into a compact remain sovereign, though yielding certain rights of government to an agent. If this agent, the central government, transcends its authority, a state is entitled to announce the fact and to declare the unauthorized act void and of no effect. The states who are the real parties to the compact should then be asked to pass authoritatively upon the question, and Calhoun seemed to see, in the provision for amendment by the legislatures of three-fourths of the states, a means of passing upon the validity of governmental action. The result of a three-fourths vote in favor of validity of any act of the national government ought then, it would seem, to be a final judgment. But here Calhoun is necessarily vague; at least, it is fair to say, on this aspect of the subject he did not dwell. Apparently one more than one-fourth—seven, let us say, of the twenty-four states then in existence—could prevent an act of Congress from being recognized as valid. That was not all, however; for of course a sovereign state could not completely surrender its will and its power of determination, and therefore, even if the decision of the states by a vote of twenty-three to one favored the constitutionality of the acts complained of, the complaining state was not legally bound; it could acquiesce or it could leave the Union. Calhoun naturally tried to make out, by his elaborate portrayal of the process, that it was not essentially disorganizing and destructive. He insisted that nullification was conservative or preservative; without such a process a state would be compelled to leave the Union at once, whenever it believed an act to be beyond the powers of the central agent; but by nullification a state

would call attention to illegal and unauthorized procedure, might enlist the support of the other states, might call the disobedient agent back within the limits of its authority, and thus save the Constitution and not break up the union. According to Calhoun nullification might well be justified; its purpose was to save the Constitution. In case the central government, the agent of the "co-states," exceeded its authority, it was more than the right, it was the duty of the state to resort to this process. Secession would be justified only by unconstitutional action by the co-states themselves.

It is unnecessary to present arguments here against the theory of the right of nullification; it had, as we have seen, little support at the time. It rests on the doctrine of state sovereignty, and any one believing the states were sovereign before the Civil War, has in mind the basis for the belief in nullification. Though nullification has at times been rejected by advocates of state sovereignty, there appears to be no logical inconsistency.

That a minority of states or even one state might check or restrain the action of government was not in Calhoun's mind an objection to his theory. He rejected totally the idea that a numerical majority should govern, and he presented the theory of "concurrent majority," in accordance with which each interest or portion of the community would have a negative on the others. As Calhoun later said:

> It is this negative power—the power of preventing or arresting the action of the government—be it called by what term it may—veto, interposition, nullification, check or balance of power—which, in fact, forms the Constitution.

See VIRGINIA AND KENTUCKY RESOLUTIONS; SECESSION; SOUTH CAROLINA; STATE; STATE SOVEREIGNTY.

References: G. Hunt, *John C. Calhoun* (1907), 75–169; D. F. Houston, *Critical Study of Nullification in South Carolina* (1896); J. C. Calhoun, *Works* (R. K. Crallé, Ed., 1853–1855), I, II, VI; *State Papers on Nullification* (1834); H. V. Ames, *State Documents on Federal Relations* (1906), 164–190; W. MacDonald, *Jacksonian Democracy* (1906), ch. ix; J. S. Bassett, *Life of Andrew Jackson* (1911), II.

ANDREW C. MCLAUGHLIN.

NURSES, DISTRICT. The larger municipalities of this country have begun, since 1905, to employ nurses for the benefit of public health and for the assistance of those in need of their services. In Boston such nurses are employed in the schools and in the visitation and instruction of cases of tuberculosis and other contagious diseases, some of them acting under the school committee, others under the board of health, still others under the consumptives' hospital department. In Chicago there are free district nurses at the service of anyone in their district. Doubtless, in future, an increasing share of medical work, both curative and preventive, will be done through such public nurses. In the public schools they do great part of the medical work. See CHARITIES, PUBLIC AGENCIES FOR; CONTAGIOUS DISEASES; DISPENSARIES, FREE; HEALTH, PUBLIC, REGULATION OF; HOSPITALS, PUBLIC; SCHOOL HYGIENE. **References:** Mabel Jacques, *District Nursing* (1911); C. A. E. Winslow; "The Robe of the Visiting Nurse in the Campaign for Public Health" in *American Journal of Nursing*, August, 1911; H. B. Favill, "Addresses Given at the Twenty-Fifth Anniversary of the Boston Instructive District Nursing Association" in *American Journal of Nursing*, October, 1911; *The Visiting Nurse Quarterly*, January, 1910.

R. C. C.

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OATH OF OFFICE. It is usual to require of one who enters upon the discharge of a public office or trust for which he has been selected that he make a declaration in a formal and solemn manner that he will faithfully discharge the duties of such office or trust. The method and substance of such declaration are often prescribed by constitutional provisions. In the Federal Constitution a form of oath is prescribed for the President (Art. II, Sec. i, ¶ 7). It is further provided that Senators and Representatives in Congress and the members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states shall take oath to support the Federal Constitution (Art. VI, ¶ 3). E. McC.

OBITER DICTUM. A remark, or statement of opinion of law, made by a judge in the course of his "opinion" but not necessary to the decision of the case, or upon a point not involved in the decision, and therefore lacking the authority of an adjudication. **Reference:** Cohens *vs.* Virginia, 6 *Wheat.* 264, 399. H. M. B.

OBSERVATORIES, PUBLIC. From colonial times some of the boundaries were defined as following parallels of latitude or meridians, the ascertainment of which was a geometrical problem; but there was no public observatory as a point of departure though several of the early colleges had telescopes and other astronomical instruments. In 1807 the creation of the coast survey gave additional reason for a government institution, which would accurately establish certain fixed points as a basis for the charts of the coast. Another governmental task was a provision of data for mariners so that they might fix their positions at sea.

These three tasks were the main reasons for the establishment of the naval observatory in Washington in 1844. From that time the director has always been a naval officer, sometimes retired; but the rather rapid succession of directors, none of whom had spent his life in the science of astronomy, has prevented that observatory from standing alongside the similar government institutions, such as the observatories of Greenwich and Paris. From the naval observatory proceed a series of publications under the title of *Annals;* and the quinquennial *Nautical Almanac.* The appropriations for the support of the naval observatory for the fiscal year 1911–12 were $92,130. See Education as a Function of Government; Science, Public. **Reference:** Director of Naval Observatory, *Annual Reports.* A. B. H.

OBSTRUCTION, LEGISLATIVE. See Filibustering in Legislative Bodies.

OCALA PLATFORM. A Farmers' Alliance convention was held in Ocala, Florida, December, 1890. It did not present a candidate for the presidency but put forward a platform demanding the free and unlimited coinage of silver, the abolition of national banks, laws preventing dealing in futures, and laws prohibiting alien ownership of land. See Farmers' Alliance; Populist Party; Silver Coinage Controversy. A. C. McL.

OCCUPATIONAL DISEASES. Legislation requiring physicians to report cases of certain well-defined occupational diseases, such as poisoning from lead, phosphorous, arsenic, mercury, or their compounds, anthrax, or compressed-air illness, precisely as contagious diseases are reported, although in successful operation in European countries for many years, was first enacted in the United States in 1911. Eight states have now (1913) passed such laws which are expected to furnish information which may be used in improving, in many occupations, work conditions which seriously impair the health, vitality, energy, and industrial efficiency of wage workers. See Employers' Liability; Factory Legislation; Health, Public, Regulation of; Labor, Protection to. **References:** Sir T. Oliver, *Dangerous Trades* (1902), "Industrial Lead Poisoning" in U. S. Bureau of Labor, *Bulletin*, No. 95, (1911); J. B. Andrews, "Phosphorous Poisoning in the Match Industry" in *ibid*, No. 86 (1910), 31–146, *Industrial Diseases and Occupational Standards* (1910); A. Hamilton, "The White Lead Industry" in *ibid*, No. 95 (1911) 189–259; F. L. Hoffman, "Mortality from Consumption in Dusty Trades" in *ibid*, No. 79 (1908), 633–875, "Mortality from Occupations Exposing to Municipal and General Organic Dust" in *ibid*, No. 82 (1909), 471–638; Illinois Commission on Occupational Diseases, *Report* (1911); Nat. Conferences on Industrial Diseases, *Reports;* Am. Assoc. for Labor Legislation, *Publication* No. 10 (1910); *Am. Labor Legislation Rev.*, I, No. 2 (1911); bibliography in *ibid*, II, No. 2 (1912); J. Goldmark, *Fatigue and Efficiency* (1912); *Am. Year Book, 1910*, and year by year. C. F. G.

OCCUPATIONS. See AGRICULTURE; BUSINESS, GOVERNMENT RESTRICTION OF; EMPLOYERS' LIABILITY; FACTORY LEGISLATION; FISHERIES; LABOR; LICENSES FOR CALLINGS; MANUFACTURING; MINES AND MINING.

OCCUPATION OF TERRITORY. See BOUNDARIES OF THE UNITED STATES; CONQUEST, RIGHT OF; TERRITORY, ACQUIRED, STATUS OF.

OCHLOCRACY. Ochlocracy is a term first used by Polybius to describe government by the populace. Bluntschli conceived it to be the arbitrary rule of the poor and ignorant masses. According to Polybius, governmental forms succeeded each other according to a regular rule or sequence. The state began as a despotism which in time became an aristocracy; the latter degenerated into an oligarchy which eventually became a democracy; and finally democracy degenerated into an ochlocracy or mobocracy. According to him, the government of Rome at one time belonged to this class. A modern example, in the opinion of some writers, was the government of Paris by the commune in 1871. See POLITICAL THEORIES, ANCIENT AND MEDIAEVAL. J. W. G.

OCTOBER STATES. Those states which formerly held elections in October instead of in November, being of special interest in presidential campaign years because of information thus gained as to public feeling and on account of the effect upon the national election the following month. Ohio and Indiana were two important examples. At present (1913) the state election in Georgia is in October; those of Maine, Vermont and Arkansas are in September. O. C. H.

OFFENSIVE PARTISANS. A term applied by President Cleveland to the civil officers suspended by him in 1885 in accordance with his pledge with regard to civil service reform in which he said he would remove from office "offensive partisans and unscrupulous manipulators of local party management." O. C. H.

OFFICE. In a general sense, an office is a public position or employment the duties of which are to be discharged by an officer.

For various purposes it is necessary to determine what is a public office within constitutional or statutory provisions. Thus there are provisions in the Federal Constitution that "no Senator or Representative or person holding an office of profit or trust under the United States" shall be appointed a presidential elector (Art. II, Sec. i, ¶ 2), and that "no Senator or Representative shall during the time for which he was elected be appointed to any civil office under the authority of the United States which shall have been created or the emoluments whereof shall have been increased during such time," and that "no person holding any office under the United States shall be a member of either House during his continuance in office" (Art. I, Sec. vi, ¶ 2). Some light is thrown on the meaning in which the term "office" is used in these constitutional provisions by the prescribed method of appointment to office, which is that the President shall have power to nominate, and by and with the advice and consent of the Senate to appoint certain specified officers "and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments" (Art. II, Sec. ii, ¶ 2). While various agents and employees of the government in its different departments may be provided for, they are not officers of the United States unless their appointment is authorized to be made in one of the methods thus provided. The question whether such an appointee is an officer may also be important in determining the power of removal, for in general the power to remove is coextensive with the power to appoint unless expressly or impliedly limited. The mere fixing of the term of tenure for an office does not necessarily exclude the power of removal during such period. Only "civil officers" in addition to the President and Vice-President are subject to removal by impeachment under the provisions on that subject in the Federal Constitution (*see* IMPEACHMENT). In determining whether a position of trust or authority is of such character as to render the person holding it an officer, it is important to consider not only the method of appointment but also the tenure, duration, emoluments, and duties of the position as determined by law. One is not an officer whose employment is not continuing and permanent in its nature but only occasional and intermittent and whose emoluments are in the nature of compensation for services contracted to be performed rather than by way of a fixed compensation attached to the holding of the position; but the fact that compensation is in whole or in part by way of fees to be paid for official services does not necessarily preclude such position being in fact an office.

The holding of a public office involves the right to exercise the public functions appurtenant to such office and to have the fees and emoluments belonging to it, and in this sense there may be a right to an office which the law will recognize and protect. There is no vested right, however, in an office, and the powers and duties of a public officer may be enlarged or restricted by statute or the office itself abolished without ground of complaint on the part of the holder unless some specific constitutional prohibition is violated. But the right to the prescribed compensation for official services which have been rendered is in its nature

a contract right which can not be impaired or taken away. An employment as distinguished from an office usually involves the notion of a contractual relation.

See Appointments to Office; Inferior Officers; Patronage; Public Officers; Removal of Public Officials; Tenure of Office; Terms of Public Officers.

References: W. W. Willoughby, *Constitutional Law* (1910), I, 166 *et seq.*, 528; J. H. Finley and J. H. Sanderson, *Am. Executive and Exec. Methods* (1908), 251–265. E. McC.

OFFICE, OBLIGATION TO ACCEPT. Since the functions of government can be performed only through individuals, the state may compel the acceptance of public service. The duty to assist in civil administration is analogous to that which every citizen owes to assist in the maintenance of order in the community wherein he resides and to which he owes the protection of his life and property. At the common law a person elected to a municipal office could be compelled by mandamus (*see*) to accept and serve, and his refusal rendered him liable to indictment. Similar provisions are found in some of the states, but no one already holding one office can be compelled to accept another (Hartford *vs.* Bennett, 10 *Ohio St.* 441), nor required to accept an office which disqualifies him for other offices, as *e. g.*, a judicial office, election to which would render him ineligible to any other office during the term for which he was chosen (Smith *vs.* Moore, 90 *Ind.* 294). Whether service without compensation may be required is an unsettled question. It is perhaps needless to add that in the United States it is seldom necessary to resort to compulsion in order to induce acceptance of office, but it is not unknown. See Appointments to Office; Public Officers. References: F. R. Mechem, *Law of Public Offices and Officers* (1890), 155–159; People *vs.* Williams, 145 *Ill.* 573 (1893). L. B. E.

OFFICE, QUALIFICATIONS FOR. See Qualifications for Office.

OFFICERS. See Inferior Officers; Officials; Public Officers.

OFFICERS IN CITY GOVERNMENT. The chief officers of city government in the United States are the mayor (*see* Mayor), the members of the city council in its single or double chambers (*see* Boards, Municipal; Common Council) and the heads of the various city departments. In cities which have adopted the commission form of government the chief municipal officers are the five commissioners, each of whom combines the duties of a councilman with those of a department head (*see* Commission System of City Government). Important among the heads of departments are the City Clerk, City Treasurer, Corporation Counsel or City Attorney, City Engineer, City Physician or Health Officer, Comptroller or Auditor, and the officials, whether single commissioners or members of boards, in charge of the Public Works, Police, Parks, Water, Sewerage, Poor Relief, and Assessing departments (*see* City Attorney, City Engineer, City Treasurer, etc). Subordinate officers are deputy heads of departments, the officials in charge of divisions or bureaus, and the whole staff of foremen and other directing employees (*see* Civil Service). See Alderman; Boards, Municipal; City Attorney; City Clerk; City Engineer; City Physician; City Treasurer; Civil Service; Commission System of City Government; Common Council; Mayor; Municipal Government. References: C. R. Woodruff, Ed., *City Gov. by Commission* (1911); H. Bruére, *Commission Plan of City Gov.* (1912); W. B. Munro, *Government of Am. Cities* (1912), ch. xi; F. J. Goodnow, *Municipal Government* (1909), ch. xi; J. A. Fairlie, *Essays in Municipal Administration* (1908), chs. ii, iii.

W. B. M.

OFFICERS, MILITARY AND NAVAL. A year's experience in command of the Continental Army led Washington to urge Congress to secure competent officers, "gentlemen and men of character," by an offer of permanent rank and liberal pay. He would doubtless have accepted the German doctrine that, "Officers are the soul of an army" and that discipline depends upon their indefatigable activity, spotless honor, and Spartan self-denial. The methods by which capable officers are secured and organized require notice.

Appointment.—Systematic choice is impossible when thousands of untrained men have to be made officers to command armies of recruits. Military education must be acquired during peace, in order to avoid the confusion of an unarmed nation on the eve of war; and military schools are obviously a convenient mechanism for selecting and training those adapted to the profession of arms. Will power and common sense are indispensable qualities for an officer; and these can be tested by discipline while the cadet is acquiring an education. Drill is also useful for the development of that automatic readiness and easy self-confidence indispensable to the military or naval officer. The national academies at West Point and Annapolis furnish a democratic method of securing officers, since they are little affected by external influences, political or social.

In every war of the United States the improvised volunteer armies have been largely untrained.

Officers, Military and Naval.—During the Civil War, the graduates were comparatively a handful, though a great many of the successful commanders were West Point men; 7,500 volunteer officers were appointed and assigned

to duty by the Navy Department as soon as they had mastered "the rudiments of gunnery and nautical routine." Tens of thousands who had no professional qualifications except those acquired in service, became officers of the volunteer army by appointment from governors of states.

In 1898 in addition to the 2,143 officers of the regular Army about 9000 volunteer officers held commissions from the states; but the volunteers raised for service abroad in 1899 were commanded by officers appointed by the President. The reorganization of the Army in 1901 led to the appointment of 1,542 officers of the line who had not been educated for the service; 616 had served in the volunteers; 414 in the ranks of the Army; and 512 were drawn from civil life. Counting 276 newly commissioned cadets, the educated officers filled less than half the 2,900 places in the line; and the necessity of enlarging the service schools of application at once became obvious. In 1861, governors commissioned many officers who had provided recruits for new regiments, leaving it to the War Department to eliminate the unfit by sending them before examining boards. Many states allowed recruits to elect their officers; and Congress sanctioned this method on July 22, 1861, though the provision was soon repealed as infringing on the rights of the states. The practice of raising new regiments to fill quotas hindered the promotion of deserving soldiers in the old regiments at the front. An army corps of veterans was authorized in 1864 with officers to be selected according to their military records.

Though advancement from the ranks of a veteran volunteer army should, in the hands of impartial superiors, give excellent results, the plan is less applicable among professional soldiers during peace. The inevitable disappointment of the majority of recruits attracted by the hope of promotion may impair discipline; and garrison duty affords few opportunities for study or for the performance of conspicuous service. In 1912 about 29 soldiers received commissions in the Army, along with 189 civilians and 177 cadets.

Foreign Appointment.—Great Britain selects officers by all the methods indicated above, but seems to put more trust in competitive examinations than the American authorities. Countries where universal military service prevails find means of testing aptitude for command and educational qualifications under service conditions. German aspirants for a commission have to be accepted by vote of a majority of the officers of the regiment or station where they serve on probation; and this applies to carefully educated naval cadets as well as to candidates serving in the ranks of the army. France sends all her educated cadets to the ranks for a year; but many French non-commissioned officers are advanced after a severe examination.

Promotion.—The obvious standard for promotion is fitness for higher command; neither length of service nor acts of gallantry should establish a claim for advancement. Retirement for the veteran, and medals for those credited with "extraordinary heroism"—a current note in the margin of the Navy Register—are cheaper and safer rewards than the grant of responsibility to the unfit. Advancement by numbers, as in the Navy, is trivial and unsatisfactory; but the law does not allow a naval officer to win one of the medals of honor worn by officers in the Army and enlisted men in both services.

Elimination.—Promotion by seniority is now the rule in the United States except for generals in the Army; it formerly applied only in regiments of the Army and the resulting inequality has now to be corrected by special legislation. Assuming that the peace organization is sound and that it provides for developing and testing the fitness of officers for higher command, this automatically equitable system may be commended. Seniority, tempered by elimination, answers well wherever strict and impartial methods can be applied Qualifying examinations when promotion becomes due are of moderate utility; but special boards, authorized to recommend the retirement of any officer whose retention or advancement appears undesirable may affect notable improvement. The Navy has had such boards since 1899, acting only with reference to the higher grades in the service, and the War Department urges Congress to set up a similar eliminating authority for the Army.

Since some form of regular promotion is a vital necessity for a progressive service, it is facilitated for the Navy by allowing voluntary retirement among the senior officers and by compulsory retirement in cases designated by a board of rear-admirals. Few of those retired under these provisions have served less than 30 years, and most can count nearly 40. Most of the ships are now commanded by captains not much over 50, though the rear-admirals commanding divisions average ten years more. Slow promotion brings an officer into a grade where responsibility is great after he has passed beyond the plastic years, and often when he is on the eve of retirement for age. Plans for graduated retirement, with rates of pay which make elimination less costly than the present method, have been brought before Congress, which is asked to sanction rates of retired pay proportionate to length of service.

Selection.—Selection is advocated by many progressive officers; but no comprehensive or specific basis appears to be formulated. Arbitrary or careless selections would not tend to efficiency; and any plan which made promotion dependent upon external influence would be a danger to the services. The General Staff, working through the schools of application, might determine the capacity of officers for spe-

cial duties and thus find a practical rule for selection. Any unsystematic or uncandid analysis of service records is apt to result in injustice. The President appoints brigadier-generals by selection subject to confirmation by the Senate.

Assignment.—The power of detailing officers for specific posts and commands is of greater public utility than any system of distributing rank as a reward for past services. If responsibility had to follow rank in all cases sweeping measures for compulsory retirement would precede the opening of every active campaign. But the President and the Departments at Washington have always chosen the commanders of military or naval expeditions with little regard for relative rank. The Navy has never had anything like the permanent organization of a regiment, the officers of ships receiving orders for the cruise only. The staff corps of the Army are now supplied with officers by details for a fixed period, and a statutory limitation of detached service was enacted in 1912. Certain heads of bureaus are appointed by the President for four years; but all other assignments are made by authority of the Secretary of War or the Secretary of the Navy.

Rank and Pay.—The number of officers in the different grades is fixed by Congress, and appointments are made by the President and confirmed by the Senate.

COMMISSIONED OFFICERS, ACTIVE LIST; AUTHORIZED NUMBER AND RELATIVE RANK, DECEMBER, 1912

Military Grades	Army		Marine Corps		Naval Grades	Navy		Pay
	Line	Staff	Line	Staff		Line	Staff	
Major-Generals	6	1	1		Rear-Admirals (1st 9)	12		$8,000
Brigadier-Generals	15	11			Rear-Admirals (2d 9)	12	6	6,000
Colonels	106	59	8	3	Captains	95	44	4,000
Lieutenant-Colonels	92	88	7	5	Commanders	117	51	3,500
Majors	216	262	19	8	Lieutenant Commanders	210	210	3,000
Captains	1,039	363	90	13	Lieutenants	351	282	2,400
First Lieutenants	1,062	467	92		Lieutenants (junior grade)	188	95	2,000
Second Lieutenants	973	43	76		Ensigns	722	46	1,700
Total Number	4803		322			2441		

Only 4,470 officers of the Army were actually in the service in 1912, when there were 150 vacancies in the list of second lieutenants, and many in the medical department.

The Admiral of the Navy, with a salary of $13,500, is not subject to retirement for age, and the appointment of a successor is not authorized by law. Two hundred and eighty midshipmen in March, 1912, became ensigns under the new statute granting a commission to all graduates of the Naval Academy.

The pay of officers is increased 10 per cent for service abroad or at sea; and there is a like increase for each 5 years' service up to 20 for officers below the rank of brigadier-general, with a limit of $5000 and $4500 for the rank of colonel and lieutenant-colonel respectively. The Navy has 658 warrant officers not in the line of promotion though entitled to a commission with the relative rank of ensign after 6 years service and paid from $1500 to $2250 per annum. Though the officers of the various staff corps of the Navy have relative rank with the line, as shown in the table, their titles indicate their specialty. The Army allows military titles to all its officers.

See ARMY, STANDING; COMMANDER-IN-CHIEF; COURTS MARTIAL; EDUCATION, MILITARY AND NAVAL; MILITARY LAW; MILITIA; RETIREMENT OF MILITARY AND NAVAL OFFICERS; VOLUNTEERS; WAR, CARRYING ON; WAR POWER, CONSTITUTIONAL; WAR POWERS OF THE PRESIDENT.

References: L. Abeille, *Marine Francaise et Marines Étrangers* (1906); R. A. Alger, *Spanish-American War* (1901), 19, 20, 33, 457, 458; J. D. Cox, *Military Reminiscences* (1900), I, 439; W. C. Ford, Ed., *George Washington's Writings* (1890), IV, 440, 443, VIII, 485, X, 262; I. Hamilton, *Compulsory Service* (1911), 27; L. C. Hatch, *Administration of the Am. Revolutionary Army* (1904), chs. iii, v; W. zu Hohenlohe, *Letters on Infantry* (1889); P. Pulsifer, *Navy Yearbook, 1912*, 706, 731, 738–751, 806–821, and year by year; W. Reid, *Ohio in the Civil War* (1868), I, 221; E. Upton, *Military Policy of the U. S.* (1907), 15, 29, 31, 61–63, 150–154, 181–184, 193, 260–263; U. S. Navy Department, *Annual Reports, 1865*, 13, *1889*, 63, 64, 411, *1910*, 288–291, *Navy Register 1912*, 53–57, 127–132, 576; U. S. War Department, *Annual Reports, 1899–1903, 1904*, 61–65, 148–150, 277, 326–331, 415, 481–486, *1908*, 1–16, 78–82, 361–363; *1910*, I, 23–25, 155–161, *1912*, I, 7–9, 88, 110–118, 130–135, 151–155, 250–254, 280–295, 436, 446, 938; *Military Laws* (1908), 208–219, 252, 1179; *Official Records of the Civil War* (1880–1901), Series III, II, 113, 150, 170, 381, 396, 538, 594; *Army Register* (annual). C. G. CALKINS.

OFFICERS, MILITARY AND NAVAL, RETIREMENT OF. See RETIREMENT OF MILITARY AND NAVAL OFFICERS.

OFFICES, MULTIPLICITY OF. The great increase in the population of the country, especially in urban districts, and the assumption by the government of many functions formerly left in private hands have necessitated a corresponding increase in the number of offices

and officers. These new offices have been made elective to a degree which renders the voter's discharge of his task bewildering and necessarily unintelligent. A ballot in a congressional district in Chicago in 1906 contained 334 names, while a primary ballot in an assembly district in New York contained 835 names. A vast army of officers is necessary for the performance of the work of the federal, state and local governments, but the public service would be greatly improved if there were a considerable consolidation of offices and if most of them were filled by appointment rather than by election. See BALLOT; BALLOT, SHORT. References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. lxi; C. A. Beard, "The Ballot's Burden" in *Pol. Sci. Quart.*, XXIV (1909).

L. B. E.

OFFICIALS. An official is an agent. A public or governmental official is one invested by law with political authority. The term "official" is not used in the Constitution, the word "officers" being employed but not defined. Giving to this word a restricted and technical meaning, it has been held that members of Congress are not officers for the reason that they are not nominated and, by and with the advice and consent of the Senate, appointed by the President nor commissioned by him; nor, of course, are they inferior officers (*see*) whose appointment may by law be vested in the President alone, in the courts of law or in the heads of departments (*see* Burton *vs.* U. S., 202 *U. S.* 369, United States *vs.* Mouat, 124 *U. S.* 303). The Supreme Court has declared that "an office is a public station or employment conferred by the appointment of government," and that the term embraces the ideas of "tenure, duration, emolument, and duties" (U. S. *vs.* Hartwell, 6 *Wall.* 385). Therefore, it has been held that a contractor for the Federal Government is not an officer, nor are directors and trustees of public federal institutions, though they are appointed by law. For a valuable report upon this subject see *House Reports*, 55 Cong., 3d Sess., No. 2205. See APPOINTMENTS TO OFFICE; EMPLOYEES OF GOVERNMENT; INFERIOR OFFICERS; PUBLIC OFFICERS, CLASSIFICATION OF. Reference: W. W. Willoughby, *Constitutional Law of U. S.* (1910), II, 1178 *et seq.*

W. W. W.

OFF-YEAR. An expression applied to the three years of comparative political calm intervening between the excitement of the quadrennial presidential campaign years.

O. C. H.

O GRAB ME ACT. A derisive term applied to the Embargo Act, (*see*) in force from December 22, 1807, to February 28, 1809, by the opponents of Jefferson's administration, and by those who evaded the provisions of the act. The expression was derived from spelling backwards the term embargo. O. C. H.

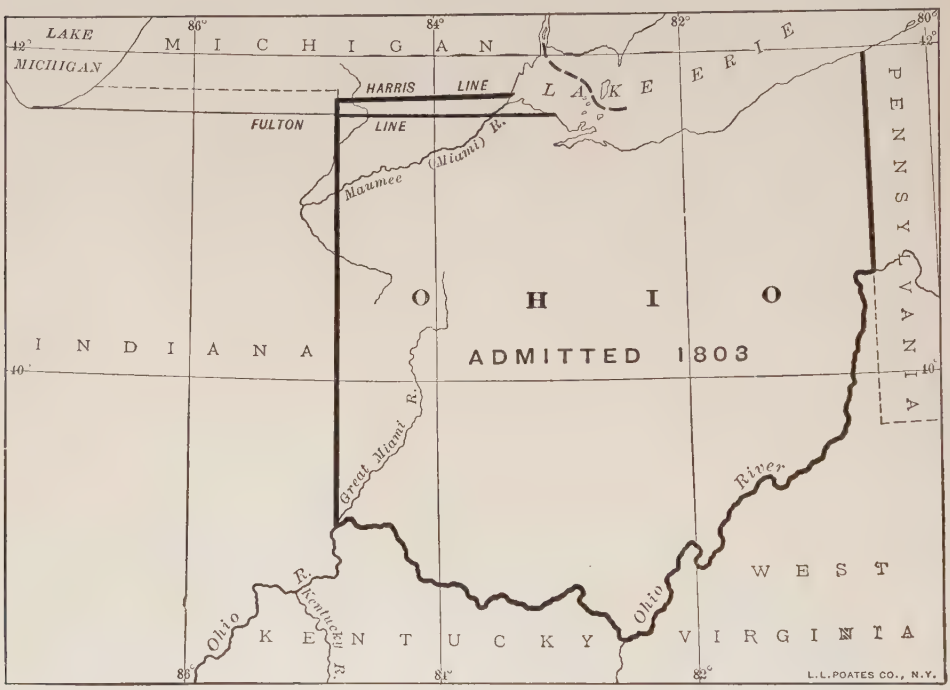
OHIO

Early History.—Ohio comes into history as a part of the Northwest Territory, erected by the Government of the United States under the Articles of Confederation. The enactment of the Ordinance of 1787, and the simultaneous purchase of public lands, negotiated by Manasseh Cutler, set in motion in the states along the Atlantic a rapid migration to the region between the Great Lakes and the Mississippi and Ohio Rivers. Government was inaugurated, July 15, 1788, at Marietta, situated at the mouth of the Muskingum River, where an advance guard of settlers had arrived a few days before.

As the nucleus of the Northwest Territory, and the first state carved out of the public domain, Ohio offsets the priority that the kindred states, Michigan, Wisconsin, Illinois, and Indiana, boast as seats of the French occupation. Six large divisions appear on the historical maps of the state that are distinguished by the circumstances of survey and colonization. There are the Seven Ranges, where rectilinear townships were earliest marked off, 1786, according to the land ordinance enacted the year before; the Ohio Purchase, including Marietta, where political institutions were inaugurated; the kindred Symmes Purchase, where the city of Cincinnati was founded the same year; the Virginia Military Bounty Lands, defined by their name, and surveyed by the old tree-blazing method; the Connecticut Reserve, or Western Reserve, where Moses Cleaveland, as superintendent of the Connecticut Land Company, founded the city of Cleveland in 1796; and the United States Military Bounty Lands. Pennsylvania men settled the Seven Ranges. The pioneers of both the Ohio Purchase and the Connecticut Reserve came from New England. The Virginia Military District brought emigrants from Virginia. The Symmes Purchase attracted middle state men. The remaining portions of the state, known altogether as "Congress Lands," include a much longer list of "tracts" and "grants" given to small communities of various races and sects. These historical divisions have never had political significance. They show their effects in differences of religion, educational tendencies, and domestic manners.

The Northwest Territory.—General Arthur St. Clair was territorial governor. Along with St. Clair and Manasseh Cutler, General Anthony Wayne stands as one of the founders of

the "Old Northwest," his service being the subjugation of the Indian tribes. The centralized government defined by the Ordinance of 1787 lasted ten years. In prompt succession, counties were laid off that comprehended the entire territory—Wayne County, with its seat at Detroit, made a sharp contrast by its enormous size, with the thin population to the northward. The centers of territorial government remained at the south. The laws were promulgated at Marietta, Cincinnati, and Vincennes. In 1798, the second stage of government defined by the Ordinance was entered upon. Representative institutions now appear in a legislative assembly, with lower house chosen by a semi-popular electorate. The first general assembly met at Cincinnati, September 24, 1799.



Boundaries of the State of Ohio

Admission.—The admission of Ohio into the Union was the occasion of the first proper enabling act passed by Congress. The precedent of party strife as an attendant of state making was also set. Prospective state boundaries had been defined in the Ordinance. Federalism, overthrown in the national government, was strong in the territorial legislature. In order to secure to the party the Representative and two Senators that would soon supersede the delegate to Congress, a bill was passed to have the western boundary drawn inward to the Scioto River. A Republican embassy to Washington secured contrary action by Congress. The Enabling Act of April 30, 1802 defined boundaries, authorized a constitutional convention, prescribed the mode of calling it, and adjusted the educational land grants of the Ordinance of 1785, with further grants. A constitution was adopted by the convention, November 29, 1802. It was never submitted to the people. For the entrance of Ohio into the Union, eight different dates have been assigned, in consequence of the absence of a formal act of admission. February 19, 1803, Congress passed an act to provide for the execution of the laws of the United States within the state of Ohio, and the best judgment makes this the mark of admission. The boundary question was to be fought again in the "Toledo war," 1835, between Ohio and Michigan.

Constitution of 1802.—The first constitution of the state has been characterized as "a government which had no executive, a half-starved, short-lived judiciary and a lop-sided legislature." The legislature enjoyed the power of appointing the principal state officers, the governor excepted, including even the judges and generals of the militia. Its acts were unchecked by veto. The executive was correspondingly weak. The explanation of this leap from the centralized government of the Ordinance to extreme democracy is a personal cause—Governor St. Clair's ardent Federalism had brought popular hatred upon his office. Despite the defective balance of the powers of government, Ohio enjoyed phenomenal prosperity under its first state constitution. The first governor was Edward Tiffin. The capital, first at Chillicothe, was established at Columbus in 1816.

Constitution of 1851.—The constitution of 1802 was superseded half a century later by one in the adoption of which ratification by the people was added to the work of the convention. Under this constitution, the general assembly consists of a house of representatives, with 117 members, and a senate with 34, elected by popular suffrage on the district plan. Regular sessions are held biennially. Restrictions upon the authority of the legislature include a prohibition of special legislation, effectively subverted by classification devices, a prohibition to appoint officers, except United States Senators, and a prohibition to exercise judicial power, except in impeachments. The processes of legislation were unique in that the signature of the governor was not a feature, until a constitutional amendment conveyed to him the veto power, so recently as 1903.

The executive includes: governor, lieutenant-governor, secretary, auditor, treasurer, and attorney general, commission of common schools, and board of public works, all elected, and manifold boards and commissions that are appointed. Originally the governor's most important relations were to the administrative bodies, where he had very large appointing power and powers of supervision. Notwithstanding the fact that the prerogatives, for a long time, were few, many distinguished men have held the office.

The judiciary included a Supreme Court, circuit courts, courts of common pleas, and justices courts. Two features call for remark. The courts of common pleas were the familiar county courts; but the judges were elected by districts nearly as large as the circuits of the next grade. The circuit courts were primarily appellate courts intermediate between the county courts and the supreme court. Probate courts were put in charge of marriage licenses, wills, guardianships, etc.

Revision of the Constitution in 1912.—The constitution of 1851 provided for the assembling at the end of every period of twenty years, of a constitutional convention for the revision of the existing instrument or the drafting of a new constitution. In 1874 the people rejected a revised constitution drafted by a convention the previous year. The next opportunity for revision was allowed to pass without action of any sort. But on January 9, 1912, a convention assembled, commissioned by popular demand to adapt the constitution to a rapid industrial expansion and the development of new political ideas. Three hundred and forty amendments to the constitution were proposed in the convention, forty-two of which were submitted to popular vote at a special election on September 3. The thirty-four amendments adopted so radically altered the existing instrument as practically to establish a new constitution.

Under the terms of the revised constitution, the work of a special session of the legislature is limited to those subjects mentioned in the governor's call or message. The passage of bills over the governor's veto is facilitated by the reduction of the prescribed majority from two-thirds to three-fifths. The legislature is authorized to enforce the attendance and testimony of witnesses to obtain information affecting legislative action or with reference to any alleged breach of its privileges or misconduct of its members. Provision is made for the prompt removal from office of all officers for any misconduct involving moral turpitude or for other cause provided by law. To the people is reserved the power of initiative and referendum and provision is made for the establishment of direct primaries, presidential-preference primaries, and for the election of United States Senators by direct vote of the people.

Appointive superintendents of public instruction and public works replace the former state commission of common schools and state board of public works. The judiciary is extensively remodeled. The circuit courts are replaced by courts of appeals, with final jurisdiction in all cases in which the death penalty, life imprisonment or constitutional questions are not involved. Common pleas districts are abolished and the jurisdiction of justices of the peace is eliminated in townships having municipal courts with like jurisdiction. The legislature is empowered to authorize by statute the return of a verdict in civil cases by three-fourths of the jury.

Local Government.—For the government of the rural districts, Ohio has the mixed type, county and township. Municipal organization, under the revised constitution, which grants to municipalities a considerable measure of home rule, includes villages and cities, a population of 5,000 being the dividing line. The city legislature consists of a council, the minimum size of seven members increasing with the population. The question of election at large or by wards is adjusted by compromise. The city executive has at its head a mayor, assisted by a president of council. There are also treasurer, auditor, and solicitor, The general administrative authority lies in a department of public service, and the police authority in a department of public safety.

Parties.—Admitted to the Union under Jeffersonian auspices, Ohio remained steadfast during the one-party rule of the Democratic-Republican period. With the division into National-Republicans and Jackson Democrats, it entered on a period of political oscillation. Upon the appearance of the modern Republican party in 1856, the presidential vote was cast for Fremont. From that date to 1908 inclusive, it was unfailingly cast for the Republican candidate for President, but in 1912 the state went Democratic by a large plurality. In party management, Ohio is not accounted a stronghold of Republicanism. At six elections out of fifteen, Ohio men have been preferred for

presidential candidates. Within the twenty-nine gubernatorial terms since 1856, state and national elections being coincident only since 1905—the Democratic party has six times elected the governor. Especially striking is the Democratic possession of the state executive for the triple term, 1909–15.

Population and Rank.—In 1800, the population of the district corresponding to Ohio was 45,365; in 1850, the population of the state was 1,980,329; in 1910, it was 4,767,121. Relative to other states, the most rapid growth of Ohio was between 1820 and 1840, when she ascended to third place in the Union. She continued to hold this until 1890, when Illinois surpassed her.

References: F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2897–2937; B. A. Hinsdale, *The Old Northwest* (2d ed., 1900); B. A. Hinsdale and M. L. Hinsdale, *Hist. and Government of Ohio* (1896); R. King, *Ohio* (1888); *St. Clair Papers* (1881); W. P. and J. P. Cutler, *Life, Journals, and Correspondence of Reverend Manasseh Cutler* (1888); H. Howe, *Historical Collections of Ohio* (1889); H. W. Elson, "The Fourth Constitutional Convention of Ohio" in *Am. Review of Reviews*, XLV (1912), 337–340; Constitutional amendments, 1912, in *Am. Year Book, 1912*, 186–188.

M. L. HINSDALE.

OHIO COMPANY. Organized in Boston, Mar. 3, 1786, it sought a private purchase of lands northwest of the Ohio. Its agents contracted with Congress for 1,500,000 acres, Oct. 27, 1787, and secured an option for 5,000,000 in addition (*see* SCIOTO COMPANY). The company founded Marietta, on the Ohio River, April 7, 1788, which became an early center of New England influence in the northwest. The contract contained the first national land grant for a university and also one for religion. Indian wars and the rise of government securities led Congress, in 1792, to waive the terms of the contract, the company receiving title to about 1,064,000 acres. **See** CESSIONS BY STATES; OHIO; SCIOTO COMPANY. **References:** W. P. and J. P. Cutler, *Life, Journals and Correspondence of Reverend Manasseh Cutler* (1888); P. J. Treat, *National Land System, 1785–1820* (1910), 47–52, 55–58; J. B. McMaster, *Hist. of the U. S.* (1910), I, 505–15.

P. J. T.

OHIO IDEA. An appellation given to a theory of finance supported most vigorously in Ohio by the Democrats under the leadership of Allen, Pendleton, and Ewing about 1868–76, which advocated the substitution of greenbacks for national bank notes, and the payment of greenbacks for United States bonds.

O. C. H.

OIL PRODUCTION, REGULATION OF. The self-interest of owners is expected to avoid direct waste of oil. State regulations aim to prevent damage, whether to oil and natural gas bearing strata or to fresh water supplies, which arises from admixture by percolation or flooding, through neglect in boring, or by abandoning wells. For accomplishing this end, most oil and gas producing states have "plugging" laws, which in some cases are ineffective because lacking provision for adequate enforcement. Most effective are those of Indiana (March 5, Acts 1909, 234), California (March 20, 1909, ch. 356), Oklahoma (March 27, 1909, amended March 16, 1910). The main provisions of such are: (1) Every owner or person responsible who sinks any well to the depth of oil or gas bearing strata must securely case such well so as to shut off all water overlying or underlying oil-bearing strata. (2) Before abandoning, or withdrawing the casing from, any such well, the owner, or person responsible, must "properly and securely stop and plug each of said wells," according to methods and using materials minutely prescribed, to a height above the uppermost oil-bearing strata legally prescribed as to number of feet or satisfactory to the official supervisor. (3) Such plugging must be done under the personal supervision and direction of a duly qualified official. (4) Accurate and officially verified records of all wells plugged must be filed. California requires (sec. 3) an accurate log showing character and depth of the strata penetrated for all wells bored on "lands producing or containing oil, gas or petroleum." (5) Violations of the law are punishable by fine, to which incarceration may be added. (6) For assisting the state supervisor of natural gas, adequate provision is made for appointment and compensation of assistants to execute these provisions. Laws in other states are less adequate, being specially deficient in provisions for enforcement. **See** CONSERVATION; MONOPOLIES; NATURAL GAS, REGULATION OF; PUBLIC UTILITIES. **References:** Statutes of the several states, of which the most important are cited in above text; *Laws Relating to Natural Gas and Oil* (Indiana), prepared by W. E. Morse (1909); State Natural Gas Supervisor of Indiana "Annual Report" in *Thirty-Fourth Annual Report of the State Geologist* (1909), 265–269; "Mineral Production County Maps and Mining Laws of California" in California State Mining Bureau, *Bulletin, No. 60* (1909), 66–67; F. S. Barde, "Oil Fields and Pipe Lines of Kansas" in *Outlook*, LXXX (1905), 19–33; J. J. McLaurin, "The Oil Situation in Kansas" in *ibid*, 427–431.

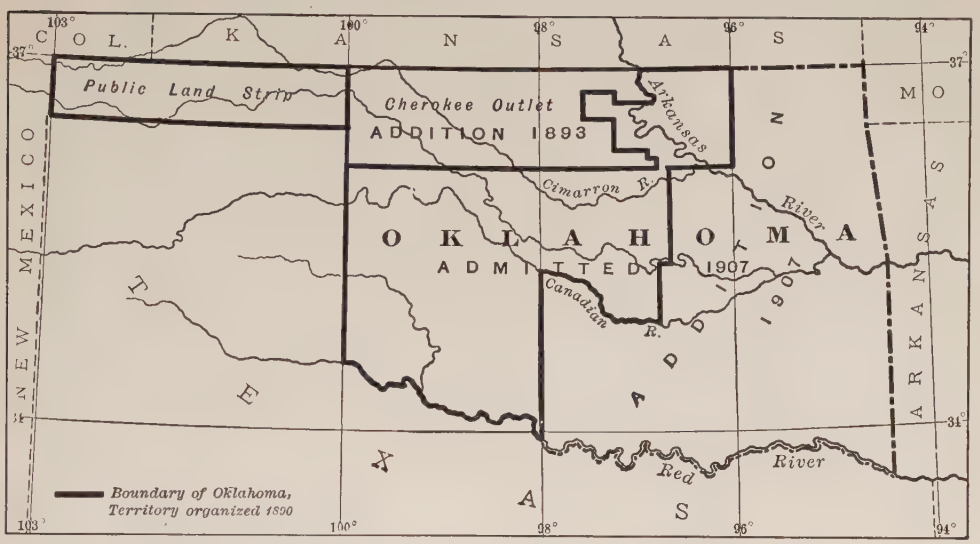
E. H. V.

OKLAHOMA. Territorial Status.—The beginnings of Oklahoma Territory were a result of a readjustment between the Federal Government and the Five Civilized Nations following the Civil War. On account of the Indians' participation in the southern cause, they were de-

prived of the western half of their lands, and on this the government proposed to settle the plains Indians. A tract of land, located in the west central part of the original Indian Territory was apparently overlooked and remained vacant. After years of agitation this tract was thrown open to settlement April 22, 1889. A rush of some 100,000 homeseekers settled these lands in a day. The tract was designated Oklahoma, distinguishing it from the Indian Territory.

No provision for government had been made by Congress in this new territory, and thus the 60,000 permanent settlers found themselves bearing on the future government of the territory, as the excellent Nebraska system of local administration at once went into effect. At the beginning, the territory, embracing a tract of less than 3,000 square miles, located in the west-central part of the original Indian Territory, was rapidly expanded by subsequent "openings" until in the year 1901, its limits touched the Kansas and Texas lines and its area was multiplied ten times.

The Enabling Act.—This act, signed by President Roosevelt June 14, 1906, provided for the joining of Oklahoma Territory and Indian Territory and their admission as one state.



Boundaries of the State of Oklahoma, Showing Territorial Changes

without a vestige of government or a basis on which to proceed in forming one. The Oklahoma cities met this crisis; within a week mass meetings of citizens were assembled, resolutions outlining a form of city government were adopted, temporary officials were selected, *viva voce,* and a day set for electing permanent officials. In less than two weeks these elections had been held, and city governments were in full operation. Though these governments had no legal basis, being founded solely on the consent of the citizens, they operated efficiently; the mayor's orders were obeyed, the ordinances passed by the city councils were complied with, and the jurisdiction assumed by the police courts was accepted, in both civil and criminal cases. No further governmental organization occurred until, after more than a year, a dilatory Congress took action. Congress then outlined (May 2, 1890) a frame of government for the territory after the usual manner of territorial governments. Until laws could be enacted by the territorial legislature, the laws of the state of Nebraska, "in so far as they were locally applicable," were established. This clause of the Enabling Act had a significant

In addition to the usual clauses in similar acts, the following may be noted. The sale of intoxicating liquors in the Indian Territory portion was prohibited for twenty-one years. The five Congressional districts were outlined by Congress instead of being left to the constitutional convention. All vacant public land was given to the state for the use and benefit of its educational institutions, and $5,000,000 additional was appropriated to the school fund of the state on account of the lack of school land in the Indian Territory portion. The state was prohibited from selling its mineral lands until January 1, 1915, and the capital was to remain at Guthrie until 1913.

The Constitution.—The proclamation announcing the admission of Oklahoma was issued November 16, 1907. The constitution is long and minute in detail, and has been criticized as being legislative rather than organic in its nature. In length it varies little from others of the later state constitutions, that of Louisiana, 1898, being equally long. This is, however, over twice as long as the Massachusetts constitution of 1780 which is still in force, nearly five times as long as the Maryland con-

stitution of 1776, and over seven times as long as the first constitution of Virginia. The most detailed portion of the constitution deals with the control of corporations, and in Article 9, Section 35, it is provided that this portion may be amended after January, 1909, by a simple act of the legislature. Furthermore, in order that the legislative features of the constitution may not hinder necessary future action, it is provided that amendment may be secured at any time, by a majority vote of the people.

Among the usual guarantees contained in the bills of rights, the following modifications are noticed. In trials by jury in all civil cases and in criminal cases less than felonies, the concurrence of nine out of twelve jurors is sufficient for a verdict. In the condemning of private property for public use, while the usual appeal from the original appraisement is granted, the provision is made that "until the compensation shall be paid the owner or into court for the owner, the property shall not be disturbed, nor the proprietary rights of the owner divested." It is clear that this clause resulted from the practice of railway corporations of securing delays through appeals during which delays they got the use of the land and the money as well. Persons accused of violating court orders of injunction or restraint when not in the presence or hearing of the court are entitled to a trial by jury as to their guilt or innocence, before penalty is imposed—a restriction on "government by injunction." Corporations are exempted from the inviolability of persons as to searches and seizures, and all books and records of corporations are subject to full visitorial and inquisitorial powers of the state. The right of the state to engage in business for public purposes shall not be denied or prohibited.

The fullest opportunity to participate in the most direct manner in public affairs is given the people by the clauses establishing the initiative and referendum system of legislation and the primary system of direct nomination of all public officers including United States Senators (*see* LEGISLATION, DIRECT; PRIMARY, DIRECT).

Local Government.—Oklahoma Territory benefited by a very complete system of local government by the application of the laws of Nebraska instituted by the Organic Act, 1890. This system was reaffirmed, and extended over the Indian Territory section by the constitution. The county government is the important unit of local administration although there exists a subdivision of this in the township administrative board.

All cities of 2,000 or more inhabitants are granted the right of framing municipal charters, providing for any form of government desired by the people and not inconsistent with the constitution and laws of Oklahoma. Acting under the benefits of this provision about fifteen of the leading cities of Oklahoma have established commission forms of government (January, 1912).

The initiative and referendum extend to city governments. All franchises must be submitted to a popular vote; the limit of franchises is twenty-five years, and the power to regulate charges can never be surrendered.

Corporations and Labor.—In furthering the policy of corporation control, a corporation commission was established with extensive powers and duties. The commission is clothed with the authority of a court of record; may administer oaths, compel attendance of witnesses and punish for contempt. Its orders have the force of law, and appeal from its decisions lies only to the supreme court.

The interests of the laborer are well-guarded by the constitution. The fellow servant doctrine is abrogated (*see* FELLOW SERVANT); the defense of contributory negligence is made a question of fact to be determined by the jury in all cases; contracting of convict labor is prohibited, and the employment of women and children is considerably restricted (*see* CHILD LABOR; LABOR, WOMEN'S).

Education.—In its public school system, Oklahoma has followed the plan of the western states in allowing a large measure of local control. Like other western states it is also generously provided with a public school fund derived from school lands. The state agricultural college and the six secondary agricultural schools are under the control of the state board of agriculture.

Besides these seven, the state has established twelve other institutions in addition to the university; six of these are normal schools, two preparatory schools, one agricultural and normal school for the colored race, a school of mines, a girls' industrial school, and a boys' training school. In March, 1911, a law was passed placing all state schools except those devoted to agriculture under a central board of education, with the state superintendent of public instruction as president, and six members appointed by the governor. The policy of dividing the state educational system among the different localities began in territorial days. At the present time (1912) an initiated bill is on file with the secretary of state submitting to the vote of the people the abandonment of fourteen of the twenty state schools.

Political Conditions.—Politically, Oklahoma may well be placed in the column of doubtful states; for, although normally Democratic, the majority for this party runs from 15,000 to 25,000 out of a total of about 250,000 votes. The constitutional convention was overwhelmingly Democratic. In the two legislatures, which have convened since statehood, the Democrats have had decided majorities. However, the three congressional elections show a closer division; as a result of the first election there were four Democrats and one Republican; in the second, two Democrats and three Republi-

cans; in the third, three Democrats and two Republicans. No very well defined state issues have characterized the policy of either party.

Population.—The population of the new state on the day of its admission was 1,414,377. Three years later, the federal census of 1910 gave the population as 1,657,155.

See CONSTITUTION MAKING IN THE UNITED STATES; CONSTITUTIONS, STATE, CHARACTERISTICS OF; INDIAN TERRITORY; STATE GOVERNMENTS, CHARACTERISTICS OF.

References: F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2939–2981, VII, 4271–4344; C. O. Bunn and W. C. Bunn, *Constitution of Oklahoma* (1907); L. J. Abbott, *Hist. and Civics of Oklahoma* (1910); Thoburn and Holcombe, *Hist. of Oklahoma* (1908); C. A. Beard, "The Constitution of Oklahoma" in *Pol. Sci. Quart.* (1909); *ibid* in P. S. Reinsch, *Readings on Am. State Gov.* (1911), 450–464; R. L. Owen, "Comments on the Constitution of Oklahoma" in Am. Pol. Sci. Assoc., *Proceedings*, V (1908), 185–191. JOHN ALLEY.

OLD ABE. See HONEST OLD ABE.

OLD AGE PENSIONS AND OLD AGE INSURANCE. The need for old age pensions or insurance but recently recognized is part of a changing industrial system in which the status of the worker is less secure and the standards of efficiency in speed, attention and endurance are rising. Workers reach the "dead line" or maximum efficiency at forty or earlier and the chances of new employment after thirty-five, in many industries, are very slim.

Germany began legislation providing old age and invalidity insurance in 1889 (*see* INSURANCE AND SOCIAL WELFARE), Denmark followed in 1891, New Zealand (1898), New South Wales (1900), Victoria (1901), Belgium (1900), Australia (1908), England and Canada (1909), and France (1910). The subject has been much discussed in America during the past two years. Massachusetts appointed a Commission on Old Age Pensions, Annuities and Insurance (1907) which reported, in 1910, adversely to a general system of state old age pensions on the grounds that the industries of the state could not stand the cost in additional taxation in competition with other states without such provision; and that it would attract workers from other states and tend to depress wages. It recommended that thrift be taught in the public schools and that systems of voluntary insurance be encouraged, especially the Savings Bank Insurance and Annuities (*see* INSURANCE SAVINGS BANK) already provided for (1907), and that state, county and local governments establish retirement systems for public employees.

The English Old Age Pension Act of Aug. 1, 1908, which took effect Jan. 1, 1909, is the most complete model of a non-contributory pension scheme. A British subject resident in the United Kingdom for 20 years, and 70 years of age, whose yearly income is not greater than £31, 10s., and who has not received poor relief since Jan. 1, 1908, nor failed, through habitual idleness, to maintain himself or his dependents, and is not a lunatic in an asylum nor has been a convict in prison during the preceding ten years, is entitled to a pension of 5 shillings a week if his yearly means do not exceed £21, 4s. and lesser amounts with increasing means so as to bring the total income to approximately $150 a year. Nearly a million pensioners are now on the rolls and the annual cost is over 13 million pounds. In time the age limit will doubtless be lowered to 65 years when means are provided for the greatly increased burden of taxation this would entail.

New Jersey appointed a commission to study the problem in 1911, and along with Illinois (1911), and Missouri (1911), New Jersey, in 1913, adopted a widows' pension plan to aid widows with dependent children under 14 years of age in the support of such children. Such acts sometimes called "funds to parents acts" or "mothers' pensions" are in reality a new form of poor relief rather than pension systems, though it has been found expedient in England to coördinate the old age pension system and the relief of aged paupers; and these measures in America are a step in the direction of more comprehensive state care of dependents which doubtless will lead to old age pensions.

See INSURANCE AND SOCIAL WELFARE; POVERTY AND POOR RELIEF; SAVINGS BANK INSURANCE.

References: Mass. Commission on Old Age Pensions, *Report* (1910); *Am. Year Book, 1910*, 434. SAMUEL MCCUNE LINDSAY.

OLD BULLION. A sobriquet earned by Thomas H. Benton (*see*), through his insistent arguments in favor of hard money in opposition to paper money. O. C. H.

OLD HICKORY. A popular nickname of Andrew Jackson (*see*) said to have been given him first by his soldiers in 1813 during a march from Natchez, Miss. to Nashville, Tenn., in recognition of his remarkable endurance and strength. O. C. H.

OLD IRONSIDES. A nickname given the frigate *Constitution*, by Oliver Wendell Holmes, 1830, in his poem *Old Ironsides*. See CONSTITUTION. O. C. H.

OLD MAN ELOQUENT. The nickname for John Quincy Adams (*see*), bestowed upon him in the later period of his life, after he had reëntered public service as a member of the House of Representatives. The name was originally applied by Milton to Isocrates.

O. C. H.

OLD TENOR BILLS. The earlier series of continental currency, partly received in payment of obligations to the revolutionary government; partly replaced at an enormous discount by new tenor bills. See CURRENCY, CONTINENTAL; NEW TENOR BILLS. D. R. D.

OLEOMARGARINE TAX. In 1886 an internal revenue tax was imposed upon the manufacture and sale of oleomargarine. This was not simply a revenue measure, but was advocated: (1) in the interest of public health; (2) in the interest of the farmer who suffered on account of the competition of oleomargarine with butter; (3) in the interest of honesty in business, on account of the increasing deception in selling oleomargarine under the name of butter. By registering and policing the business under a government bureau, it was believed that dishonesty might be checked; and that people would not buy oleomargarine if sold under its own name.

As a revenue producer the tax has not been fruitful; the maximum collected in any one year being $2,944,000 in 1902. By far the largest amount is levied in Illinois, Ohio and Kansas, since oleomargarine is manufactured as a by-product of the beef and packing industries. By the original act of 1886 the tax was two cents a pound, but in 1902 a tax of ten cents a pound was assessed, with the proviso that when oleomargarine is free from artificial coloration that causes it to look like butter of any shade of yellow, the tax shall be only one-fourth of one cent per pound. This reduction cut the receipts more than one-half.

The tax on oleomargarine is the most difficult of all the excise taxes to collect; the law is violated by illicit manufacture, and by failure of dealers to pay the special license taxes, and to mark and brand the product sold. In 1910 there were reported 2,754 violations of the various sections of the act, which in view of the slight amount of revenue is evidence of the need of a remedial statute designed solely to protect the public in its purchases. See REVENUE, INTERNAL. **References:** U. S. Commissioner of Internal Revenue, *Annual Reports;* H. C. Bannard, "The Oleomargarine Law" in *Pol. Sci. Quar.*, II (1887) 545–557; D. R. Dewey, *National Problems* (1907), 73–75.

DAVIS R. DEWEY.

OLNEY, RICHARD. Richard Olney (1835–——) was born at Oxford, Massachusetts, September 15, 1835. In 1859 he was admitted to the bar, and began practice in Boston, where he rose rapidly to eminence as a corporation lawyer. In 1893 he was appointed Attorney General in Cleveland's Cabinet. His most notable service in that office was in connection with the Pullman strike, in July, 1894, when he advised the use of federal troops to suppress the disturbances; and in March, 1895, he argued the question for the government in *In re Debs* (158 *U. S.* 564). In June, 1895, he succeeded Walter Q. Gresham as Secretary of State, retaining the office until the close of Cleveland's administration; and in this capacity carried on a vigorous correspondence with Lord Salisbury over the Venezuelan (*see*) boundary, in 1897. A treaty of general arbitration with Great Britain, negotiated with Sir Julian Pauncefote, was not acted upon by the Senate during Cleveland's term, and ultimately was rejected. During the silver agitation Mr. Olney sided with the gold Democrats. On the issue of "imperialism" he espoused the cause of the Anti-Imperialists. In 1913 he was offered and declined the ambassadorship to Great Britain, and in 1914 the governorship of the Federal Reserve Board. See MONROE DOCTRINE. **References:** D. R. Dewey, *National Problems* (1907); J. H. Latané, *American as a World Power* (1907).

W. MACD.

OMNIBUS BILL. A name ordinarily applied to a series of eight resolutions introduced by Henry Clay, January 29, 1850, for the adjustment of the pending questions relative to slavery. May 8, the provisions relative to California, Utah, New Mexico and Texas were reported in one bill, which was really the Omnibus Bill. In the course of debate most of the measures included were dropped out for separate action; and a bill for the organization of Utah, which was all that was left of this bill, passed the Senate August 1, 1850. See COMPROMISE OF 1850; DEMOCRATIC PARTY; FREE SOIL PARTY; WHIG PARTY; WILMOT PROVISO; and statesmen of the period by name. **References:** G. P. Garrison, *Westward Extension* (1906), ch. xx; J. F. Rhodes, *Hist. of the U. S.* (1893), I; J. Schouler, *Hist. of the U. S.* (1899), IV. A. B. H.

ONCE AN ENGLISHMAN, ALWAYS AN ENGLISHMAN. The theory upon which the British impressed American seamen in the period before the War of 1812, was that a man born an Englishman always remained an English subject. This idea resulted from the doctrine of indefeasible allegiance common at that time to all European nations. The United States began early to oppose that doctrine in order to make immigration and the transfer of allegiance easy; but the political and judicial authorities were not always in entire accord. See ALLEGIANCE; CITIZENSHIP IN THE UNITED STATES; EXPATRIATION, INDEFEASIBLE ALLEGIANCE. **Reference:** J. H. Moore, *Digest of Int. Law* (1906), §§ 431–440. C. H. VAN T.

ONE MAN, ONE VOTE. A phrase embodying an article in the program of the Liberal (*see*) party in Great Britain demanding the abolition of plural voting. It also expresses the fundamental idea underlying the American principle of manhood suffrage. O. C. H.

ONTARIO. Ontario is the most populous and most important of the Canadian provinces. It comprises the large peninsula bounded by the Ottawa River, the Upper St. Lawrence and the Great Lakes, but a portion of the province, at its western extremity, extends northward to the shores of James Bay. It has an area of about 260,000 square miles, and a population of about two and a half millions.

History.—During the period preceding the British conquest there were no settlements within the territory now included in Ontario except a few frontier trading posts, principally at Cataraqui (now Kingston) and Niagara. The real settlement began with the influx of the United Empire Loyalists after the Revolutionary War. These settlers took up lands in the Niagara peninsula, on the north shore of Lake Ontario, and along the Upper St. Lawrence. At the time of their arrival, Ontario, then commonly called Upper Canada, was not a separate province but was administered under the terms of the Quebec Act of 1774 by a governor and council whose jurisdiction extended over Lower Canada as well (*see* QUEBEC). In 1791, however, the Constitutional Act (31 Geo. III. c. 31) provided for the separation of the whole area into two provinces to be known as Upper and Lower Canada respectively, with a separate civil administration for each. Upper Canada, by the terms of this enactment, was placed under the administration of a governor appointed by the Crown, a legislative council of not less than seven members appointed in like manner, and a legislative assembly of not less than fifteen members elected by the people under a franchise very similar to that which existed in England at the time.

During the half century following the act of 1791 the province encountered many political difficulties. First came the War of 1812 and the various American invasions which interfered seriously with economic progress, disorganized political arrangements, and destroyed the provincial capital at York. After the war came political troubles connected with attempts of the assembly to control the policy of the executive which had managed to obtain almost entire domination of provincial affairs. The legislative council had become practically a self-perpetuating body, the members of which were related to one another, so that the real power lay with a small element in the provincial population commonly known as the Family Compact. The governors who came out from England fell readily under the influence of this element and in time the quarrel between the two arms of provincial government became acute. In 1837 matters culminated in an armed revolt headed by the reform leader, William Lyon Mackenzie. After this revolt had been quelled and its causes duly investigated by Lord Durham, the imperial authorities decided to reunite the two provinces of Upper and Lower Canada into the single province of Canada, and this was done by the Union Act of 1840 (3 and 4 Vict. c. 35). The united provinces were given a single government consisting of a governor, a ministry, an appointive legislative council, and an elective assembly of eighty members. The Act of 1840 contained no express provision that the assembly should control the executive, but this principle was conceded some few years later by Lord Elgin, the governor, on instructions from London. The government of the united provinces achieved a good deal during its twenty-seven years of existence. It established a system of municipal government, abolished the seigniorial tenure, settled the vexing matter of the clergy reserves, and made provision for many internal improvements. But as a system of civil administration it never worked smoothly, and owing to racial jealousies it was difficult for any ministry to continue long in power. It was a realization of the inherent difficulties of this situation that lent strength to the movement for federation.

Provincial Government.—The Confederation Act of 1867 (30 and 31 Vict. c. 3) again separated the provinces, giving each its own local government, and Upper Canada became a member of the Dominion under the official name of Ontario. Its representation in the federal parliament consists of twenty-four senators and eighty-six members of the house of commons. A redistribution of seats takes place after each decennial census. The provincial government consists of a lieutenant-governor appointed by the governor-general of the Dominion on the advice of his ministry, a council or ministry responsible to the assembly, and a legislative assembly of 106 members chosen for not more than four years by manhood suffrage. The powers which may be exercised by the provincial government are set forth in the Act of Confederation, and all powers not expressly committed to the province are reserved to the federal government. The revenues of the province are derived chiefly from the proceeds of public lands, inheritance taxes, and taxes on corporations. In addition the province receives an annual subsidy from the Dominion treasury.

For purposes of local government the province is divided into counties, cities, towns, incorporated villages, and townships. Each county has an elective county council with jurisdiction over country roads, bridges, jails, poor-houses and some minor matters. The cities are administered by an elective mayor and a single-chambered council both elected by popular vote. The municipal system is uniform throughout the province, and the municipalities are given a large amount of local autonomy. Among the noteworthy features of Ontario legislation are the general tax laws, the laws relating to public education, and the municipal code. The provincial capital is at

Toronto. In 1911 the population of the province was 2,523,274.

See CANADA; CANADIAN PROVINCES.

References: J. G. Bourinot, *Canada under British Rule* (1900); J. C. Dent, *The Last Forty Years* (1881); C. R. W. Biggar, *Life of Sir Oliver Mowat* (1905); W. Houston, *Documents Illustrative of the Canadian Constitution* (1891); A. H. F. Lefroy, *The Law of Legislative Power in Canada* (1897); *Canadian Annual Review of Public Affairs* (Hopkins, Ed.). WILLIAM BENNETT MUNRO.

ON THE FENCE. An expression applied to a voter who is uncertain in his political views or undecided concerning the ticket he will support. He is usually amenable to the influence of an appeal to his personal interests.

O. C. H.

OPEN AIR SCHOOLS. See SCHOOLS, OPEN AIR.

OPEN AND CLOSED SHOP. The "open" shop is one in which both union and non-union men are employed. In the "closed" shop the employer is bound by agreement to employ only union members. In the "union" shop union workmen are given the preference, and non-union men employed are expected to join the union, but there need be no contract making the shop "closed." Substantially all of the present-day American unions demand the "union" or "closed shop," but contracts to that effect the courts of many states have pronounced illegal. See ARBITRATION OF LABOR DISPUTES; CIVIL RIGHTS, CONSTITUTIONAL GUARANTEES OF; CONTRACT, FREEDOM OF; LABOR ORGANIZATIONS; STRIKES. Reference: Symposium upon "Open and Closed Shop" in Am. Econ. Assoc., *Publications*, 3d Series, VI (1905), 140–215. J. R. C.

OPEN DOOR. This is usually defined as meaning equal opportunities and treatment for the citizens of all foreign countries in their enterprises in some particular territory. It may be regarded as the generalization in certain specified regions of "the most favored nation clause common in commercial treaties. The phrase and the policy it expresses are of English origin, and free trade England alone is entirely logical and consistent in her adherence to them. The other great nations demand a door that opens only one way; for, unless restricted by treaty, they impose such tariffs and regulations as they choose in their own dominions. The adoption of the open door principle has been due to the alarm of the chief industrial peoples at seeing in recent years most of the unappropriated portions of the earth which they looked upon as future outlets for their products passing into the hands of their trade rivals. The partisans of the open door can, therefore, count in any given controversy not only on the moral advantage of the appeal for fair play, but also on the selfish interests of all who do not profit by the restrictions threatened.

Africa.—The first case on a large scale of the application of the open door policy by the European powers, with the participation of the United States, was when the Berlin conference of 1885, laying down the rules for the forthcoming partition of Africa, decreed that in the territory about the Congo basin, preferential duties should not be established by any one. Since then, similar limitations of future sovereignty have been imposed in certain other parts of the African continent; in still others the various powers are at liberty to take such measures as they please in their own possessions. In the case of Morocco the open door has been explicitly guaranteed by the Algeciras conference of 1906 and by later agreements.

Asia.—The first later official assertion of the doctrine by the United States was contained in a circular note of Secretary Hay Sept. 6, 1899, asking the powers to accept the principle of equality of treatment and opportunity in all territories of the Chinese Empire, whatever might be the changes in their political status. As no government was willing to admit an intention of annexing Chinese territories for selfish trade purposes, all with more or less willingness agreed to the proposition. Since that time the maintenance of the open door has been the corner-stone of American policy in the Far East. This has been especially true of late years in regard to Manchuria, where first in dealing with Russia, and since 1905 in dealing with both Russia and Japan, the United States has watched with jealous vigilance against any infringement of the American right of equal treatment. In theory this right is not denied by any power, but in practice a state can find quiet means of favoring the trade of its own citizens in lands which it controls; and even when it is honest in its intention of fair dealing it may have difficulty in preventing its officials from giving undue help to their fellow country-men.

Morally, too, the stand of the United States in favor of the open door has been somewhat weakened by the recent abandonment of that principle in the Philippines. However beneficial to the Islands closer and privileged commercial relations with the United States may be, the same arguments would apply—and some day may be applied—to Japan and Korea. Furthermore might it not be claimed that reciprocity between Japan and China would be as legitimate and as desirable for both parties as that attempted in 1911 between the United States and Canada? Finally the arguments that are urged against letting a foreign power obtain for itself special advantages from a helpless China would have no moral standing against the unfettered will of a China mistress of her own destinies.

America.—In the western hemisphere, the United States so far from proclaiming the principle of the open door would promptly resent any such suggestion on the part of European powers in opposition to special commercial arrangements between it and any other American country. Pan Americanism is based on quite a contrary idea. The open door, therefore is not at present a general principle supported by the United States or indeed by any nation unless it be England, for it represents a policy followed only in regard to certain parts of the world. Even in these it may not be tenable in the long run, but so far it has proved of no small value.

See ASIA, DIPLOMATIC RELATIONS WITH; CHINA, DIPLOMATIC RELATIONS WITH; COMMERCE, INTERNATIONAL; COMMERCIAL POLICY AND RELATIONS OF THE U. S.; INTERVENTION; JAPAN, DIPLOMATIC RELATIONS WITH; RUSSIA, DIPLOMATIC RELATIONS WITH; TERRITORY IN INTERNATIONAL LAW.

References: A. C. Coolidge, *U. S. as a World Power* (1908), 171, 181–183, 221, 331, 347, 366; J. B. Moore, *Digest of Int. Law* (1906), V, 533 *et seq.*; A. S. Hershey, *Int. Law and Diplomacy of the Russo-Japanese War* (1906); bibliography in A. B. Hart, *Manual* (1908), § 195.

A. C. COOLIDGE.

OPEN LETTER. A manifesto of political or general significance published in the form of a personal letter, in the press, used especially by party leaders during a political campaign. It is also applied to the correspondence, through the press, of two persons engaged in a controversy. O. C. H.

OPPOSITION. Sir Charles Tupper, in February, 1901, on resigning the leadership of the Canadian Conservatives, wrote thus of the opposition:

> The duty of Her Majesty's loyal opposition is to exercise its vast influence in restraining vicious legislation, and in giving a loyal support to proposals of the Government which commend themselves as in the interest of the country, while initiating itself such measures for the common weal as are neglected by the Administration.

An Opposition in the British Parliament is as old as government by party; and from 1734 members of the opposition have continuously sat to the left of the speaker's chair. The ceremonial term "His Majesty's Loyal Opposition," first used in 1826, was at once adopted; and has long been in use in the parliaments of the oversea dominions. In the journals, on the "order paper," and in the statutes there has never been any recognition of the existence of an Opposition at Westminster. In the Dominion Parliament the Opposition is constitutionally recognized to the extent of the payment of a salary, authorized by statute enacted in 1904, to the leader of the Opposition—to the member elected in caucus as leader of the party that sits to the left of the speaker's chair.

See HOUSE OF COMMONS; PARTY COUNSEL IN ENGLAND; PARLIAMENT. **References:** E. Porritt, *Unreformed House of Commons* (1903), I. ch. xxv; A. L. Lowell, *Government of England* (1908), I, ch. ii, xviii. EDWARD PORRITT.

ORDER, MAINTENANCE OF. Two great dangers which beset all governments are usurpation and forcible disruption. Offenses against public order are of many degrees of seriousness, and require a varying scale of penalties and remedies. The simplest instance is refusal to be governed by the restrictions of law; in such cases the ordinary remedy is automatic; for instance the man who makes an illegal contract finds that the courts will not allow him the advantages of that contract. The next case is that of disobedience to a personal order, such as a refusal to "move on" when so directed by a policeman, or to make a declaration of personal baggage when arriving in the country from abroad. Such acts may be checked by immediate arrest, or may form a basis for later criminal prosecution. If a public functionary refuses to perform his duty under the law he may be reprimanded, receive an administrative punishment, or be removed; or the courts may by writ (commonly *mandamus*) require him to perform the act, and a further refusal would then bring on the penalties of contempt of court.

So far as physical force can be used at all in such matters it is likely to be used by the municipal police, or by local constables or sheriffs. Courts of justice have their own machinery for carrying out their precepts, and making arrests under warrant—marshalls and deputy marshalls, sheriffs and deputy sheriffs, resistance to whom in the performance of their duty, may constitute a very aggravated offense.

Riots.—A more serious stage of resistance to government is the riot, which though a gregarious offense, is something more than a gathering together of discontented people; whenever there is demonstration or threat of force, every person who joins in it is individually responsible to the law. A riot may include or lead to a variety of other offenses, such as the rescue of prisoners, the terrorizing of workmen, or the destruction of property. American executive authorities usually hesitate to use force against these demonstrations; and even where there are positive crimes all the way up to murder, riots frequently go unpunished. Riotous assemblages for the purpose of taking prisoners out of the hands of the authorities and lynching (*see*) them, are in the United States frequently not followed by any prosecutions, and where prosecutions are instituted they frequently fail, both in the northern and southern states.

For the suppression of riots the municipal police is often sufficient for there is commonly a tense feeling between them and the most disorderly part of the population, and they

are likely to be attacked and will almost invariably defend each other to the death. Labor riots, particularly against strike breakers, sometimes have the sympathy of the police, and are very difficult to put down, particularly if women join in the riot. In such cases militia may be called out by the state officials for protection of life and property, and may remain under arms for days or weeks.

See CONSTABULARY, STATE; POLICE POWER; RIOTS; STRIKES. A. B. H.

ORDER OF BUSINESS IN LEGISLATIVE BODIES. The daily order of business in legislative bodies is usually regulated by the rules of each house. This order varies more or less in the different states but the following is probably the most common: (1) prayer by the chaplain; (2) reading and approval of the journal; (3) presentation of petitions, communications from the executive and messages from the other house; (4) report of committees; (5) introduction and first reading of bills; (6) unfinished business; (7) orders of the day. In the national House of Representatives, the daily order of business is as follows: (1) prayer by the chaplain; (2) reading and approval of the journal; (3) correction of reference of public bills; (4) disposal of business on the Speaker's table; (5) unfinished business; (6) the morning hour (*see*) for the consideration of bills called up by committees; (7) motions to go into committee of the whole; (8) orders of the day.

When a bill is introduced it is generally read by title. In some legislative bodies a second reading immediately follows, unless the readings are required to be on separate days, after which it is referred to the appropriate committee. In others, reference to the committee follows the first reading. When the bill has been reported from the committee, if the report is favorable (*see* REPORTS OF COMMITTEES) it is then ordered to be engrossed for a third reading and is placed on the calendar. The task of engrossing is entrusted to an engrossing clerk or other officer charged with the preparation of a correct copy of the original bill. At this stage the bill is open for general discussion and amendment. The next step is the third reading, required either by the constitution or rules of procedure in most states. Generally no amendment may be offered after the bill has gone to its third reading. After the third reading, the bill is put upon its passage. If passed by one house, it is then sent to the other house where it goes through substantially the same stages, and if passed by it, the bill is returned to the house in which it originated. It is then assigned to the enrolling clerk or other officer for enrollment. This service is usually performed under the direction of the committee on enrolled bills. After enrollment, the bill is signed by the presiding officers of each house when it is transmitted by the clerk to the executive for his approval or disapproval.

See BILLS, COURSE OF; PARLIAMENTARY LAW; RULES OF CONGRESS; VETO POWER.

References: L. S. Cushing, *Law and Practice of Legislative Assemblies* (9th ed., 1907), Pts. VII, VIII; A. C. Hinds, *House Manual* (1909); Courtney Ilbert, *Legislative Forms and Methods* (1901); P. S. Reinsch, *American Legislatures and Legislative Methods* (1903), ch. vi.

JAMES W. GARNER.

ORDERS, FRATERNAL. Fraternal orders like friendly societies in England are organized for social purposes, accompanied by secret, mysterious or religious features, and associated with financial benefits to meet emergencies, chiefly the cost of burial (*see* FRATERNAL INSURANCE; INSURANCE, INDUSTRIAL). The Ancient Order of United Workmen (1868) was the first distinctive American order. The railway brotherhoods are important organizations of railway employees. In 1905 there were reported 168 orders of all kinds, with 87,758 lodges and over five million members. Such orders flourish among the southern negroes, Social features are under control of local lodges and have little uniformity. Benefit features are regulated by supreme national councils, sometimes with intermediate state or territorial officers. Most societies are federated in one of three national conferences: National Fraternal Congress (1886), American Fraternal Congress (1898), and Associated Fraternities of America (1901), which seek to secure adequate assessment rates and safe financial management of the younger orders, and legislative protection and uniformity in state action affecting their interests. Many legislative inquiries in England resulted in Friendly Societies Acts which brought them under governmental control especially since the office of Registrar of Friendly Societies was established in 1846. Recently, in the United States a uniform bill urged by the National Convention of Insurance Commissioners has been endorsed by two of the national conferences of the orders and has been enacted in many states (16 at the end of 1912). It raises inadequate insurance rates or assessments gradually and forbids starting new orders with inadequate rates. See FRATERNAL INSURANCE; SOCIETIES, LEGAL STATUS OF.

References: C. R. Henderson, *Industrial Insurance* (1909); H. C. Stevens, *Encyclopædia of Fraternities* (1899); *Am. Year Book, 1910*, and year by year. S. McC. L.

ORDERS IN COUNCIL, 1806–1812. The commerce of the United States with European states and colonies received a severe blow when on May 16, 1806, the British Government declared the coast of Europe from Brest to the Elbe in a state of blockade. Napoleon's Berlin decree of November 21, 1806, was retaliatory,

proclaiming the British Isles blockaded and placing a ban on trade with Great Britain and English property was to be forfeited, when captured.

Another British Order in Council of January 7, 1807, denied to neutral powers the right to trade between the ports of France or her allies or with ports not freely open to British trade.

Another, November 11, 1807, put trade with an enemy port or with any port not open to British trade, on the same basis as trade with a blockaded port. Trade with enemy countries or colonies was forbidden and vessels engaged in such trade, and the articles which were products of such countries or colonies, were liable to capture and condemnation as prize. Other trade was to enter British ports and clear therefrom under such regulations as might be established. The possession of a French consular "certificate of origin" which would protect against capture by France was considered proper ground for capture by Great Britain.

Napoleon's Milan Decree of December 7, 1807, was issued in reply to these Orders in Council. The American Embargo acts followed. These were favored by Great Britain and France, but proved disastrous to United States commerce. The Orders in Council of 1807 were extended and modified; an order of April 26, 1809, extended the restrictions to Dutch ports. January 23, 1812, the Orders in Council were conditionally revoked, but too late to avoid conflict with the United States.

See Berlin Decree; Continental System; Embargo; Milan Decree; Neutral Trade.

References: J. B. Moore, *Digest of Int. Law* (1906), VII, 797 *et seq.;* Henry Adams, *Hist. of the U. S.* (1890), III, 416, IV, 79, V, 43, VII, 4; bibliography in A. B. Hart, *Manual* (1908), § 179. George G. Wilson.

ORDINANCE OF 1784. The Ordinance of 1784 was based upon a draft brought before Congress by Thomas Jefferson in March, 1784. According to this plan the western lands "ceded or to be ceded" to the United States were to be "formed into additional States." The ordinance applied to all the territory between the thirty-first parallel, the international boundary on the north, the Mississippi, and the meridian running through the "western cape of the mouth of the Great Kanawha," plus the strip bounded by the meridian just named, the Ohio, Lake Erie, and the Pennsylvania line. By means of the meridian running through "the lowest point of the rapids of the Ohio," intersected by various east and west lines two degrees apart, the whole area was to be divided into fourteen, possibly, sixteen states.

Under the terms of the Ordinance the settlers were, "either on their own petition, or the order of Congress," to meet together for the purpose of establishing "a temporary government," and, when any state had twenty thousand free inhabitants, it was to receive authority from Congress "to establish a permanent constitution or government." The state so formed was not to be admitted to the Union, however, until it had as many free inhabitants as were at the time "in any one of the least numerous of the thirteen original States." But in the meantime it was to be allowed to have a delegate in Congress with the right of debating, but not of voting.

As Jefferson presented the draft, it provided against slavery after 1800; but in the course of the debate this clause was stricken out. The ordinance was passed, April 23, 1784. The list of high-sounding names which Jefferson had suggested for the new states was omitted and there were a few minor changes. In most respects the Ordinance stood practically as Jefferson had drafted it. No action was ever taken under it. It embodied the two essential ideas of the American territorial system: (1) temporary or territorial government; and (2) ultimate admission to the Union on terms of equality with the older states.

See Articles of Confederation; Confederation; Ordinance of 1787; Public Lands and Public Land Policy; Territories of the United States, Organized; Territory, Acquired, Status of.

References: T. Donaldson, *Public Domain* (1884), 147–149; A. C. McLaughlin, *Confederation and the Constitution* (1905), 14–117; H. S. Randall, *Life of Thomas Jefferson* (1858), I, 397–400. A. C. McL.

ORDINANCE OF 1787. The problem of western lands and of western colonization was a real and important problem even before the American Revolution. The Albany Plan of Union (*see*) provided that the grand council should purchase "from the Indians for the Crown" lands that were "not within the bounds of particular colonies," or that should not be within their bounds when some of them were "reduced to more convenient dimensions" and that the council should govern new settlements till the Crown formed them into particular settlements. The problem might have been forced to an early solution had war not broken out with the mother country. But even during the war the ownership and control of the back country was much discussed. The acceptance of the Articles of Confederation (*see*) was delayed because of the western land problem, and during the discussion of the Articles, the old Congress, suggesting surrender of the claims of the states to western lands, declared that the lands ceded or relinquished should be disposed of for the common benefit of the United States and be settled and formed into distinct republican states which should ultimately become "members of Federal Union and have the same rights of sovereignty, freedom and independence," as the other states.

New York and Massachusetts gave up their western territory; Virginia ceded all her claim to territory north and west of the Ohio; Connecticut surrendered all but a strip along the southern shore of Lake Erie (*see* WESTERN RESERVE). By 1786 Congress held a vast territory west of the mountains and held it with expressed intention of providing for the formation of free commonwealths and their ultimate admission into the Union.

Plans for settlement in the northwest were talked of even before the claims of the states were formally surrendered. Early in April, 1783, Timothy Pickering and certain army officers drew up a scheme which appears to have contemplated nothing less than the establishment of a state beyond the mountains and adoption of a constitution before settlement. In April, 1784, Congress passed an ordinance which was largely the work of Thomas Jefferson. It never went into effect, but it is noteworthy because it proposed the organization of temporary, or, as we should now say, territorial governments in the new settlements (*see* ORDINANCE OF 1784).

In 1786 the Ohio Company was formed; its purpose was to purchase land in the west and promote settlements. The organization of this company appears to have stimulated Congress to new activity in establishing a system for the west. On July 13, 1787, the famous ordinance was passed, the solution of a problem which in one form or another had been active in American politics for a generation. Its most important clauses are those providing for temporary or territorial government and for admission of the western settlements into the Union on terms of equality with the old states. Though the ordinance was passed by the Congress of the Confederation which was itself about to disappear, the principle was never lost sight of, but furnished the basis for the orderly and legal expansion of the nation; the principle thus formulated was of the utmost importance for a nation whose great task was to people a continent and to develope a Federal Union.

At first the Northwest Territory was to be one district, with a governor, secretary and three judges appointed by Congress. When there were five thousand free males of full age, there might be a general assembly composed of the governor, council, and house of representatives and possessed of legislative power. Not less than three nor more than five states were to be organized from the territory, and states with a free population of 60,000 might be admitted into the Union. Announcing principles of liberty and maxims of free government, similar to the provisions in state bills of rights (*see*), the ordinance also excluded slavery: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes, whereof the party shall have been duly convicted." Perhaps even without this provision slavery would never have obtained a permanent and significant hold on the great northwest; but the precedent and the moral effect were of great significance. By an act of August 7, 1789, Congress under the Constitution established the ordinance anew and the next year applied its important governmental provisions, but not the provision concerning slavery, to the territory south of the Ohio over which it then had jurisdiction.

There has been considerable discussion about the authorship of this wise ordinance but we must content ourselves with nothing much better than speculation. Jefferson and Rufus King by their early opposition to slavery in the northwest must be remembered; Nathan Dane of Massachusetts probably had more to do with drafting the actual ordinance than anybody else; and in all likelihood Manasseh Cutler, the agent of the Ohio Company, is responsible for the inclusion of some provisions.

See ARTICLES OF CONFEDERATION; CONFEDERATION; PUBLIC LANDS AND PUBLIC LAND POLICY; TERRITORIES, ORGANIZED.

References: G. Bancroft, *Hist. of U. S.* (author's last rev., 1888), 277–291; W. MacDonald, *Select Documents* (1903), 21–29; A. C. McLaughlin, *The Confederation and The Constitution* (1905), 108–126; B. A. Hinsdale, *The Old Northwest* (1888), ch. xv; J. A. Barratt, *Evolution of the Ordinance of 1787* (1891).

ANDREW C. MCLAUGHLIN.

ORDINANCES, EXECUTIVE. By executive ordinances are meant those regulations which are issued by the chief executive or the heads of executive departments. Generally speaking, American constitutional law does not recognize as belonging to any executive authority the right to issue regulations having the force of law in the absence of the delegation to such authority by the legislature of the power to issue such regulations. Furthermore it is frequently said by the courts that the legislature may not delegate its powers of legislation to the executive authorities. At the same time it is undoubtedly the fact in the case of the United States Federal Government that Congress authorizes either the President or the head of an executive department to issue regulations with regard to some particular subject. Where such regulations have to do with the enforcement of a law whose principles have been set forth by Congress in its legislation, such action by Congress is regarded as perfectly proper. Good examples of such regulations authorized by Congress are to be found in the civil service rules prescribed by the President under the authority of the Civil Service Act of 1883 and Section 1753 of the United States Revised Statutes, and the customs and internal revenue regulations prescribed by the Secretary of the Treasury or the Commissioner of Internal Revenue under the authority of other acts of Congress.

Regulations of this character when in conformity with law are held by the courts to be binding upon the individual citizen, but the courts have no hesitation in declaring them illegal and refusing to enforce them where they have been issued in excess of the powers granted.

These executive regulations form a very large and important part of the administrative law of the United States since the tendency of Congress is more and more to rely upon the action of executive officers to apply, by means of these regulations, the principles laid down by the Congress to the details arising in connection with its legislation. Executive ordinances or regulations are not, however, nearly so important in the administrative law of the states whose legislation usually descends into such details as to make executive regulations unnecessary.

See EXECUTIVE AND CONGRESS; LAW, ADMINISTRATIVE; PRESIDENT, CONSTITUTIONAL POWERS OF.

References: J. A. Fairlie, "Administrative Power of the President" in *Mich. Law Review*, II (1903–1904), 190–210, 247–259; E. Freund, *Cases on Administrative Law* (1911); F. J. Goodnow, *Principles of Administrative Law of U. S.* (1905). F. J. GOODNOW.

ORDINANCES, MUNICIPAL. Source of Ordinance Power.—The city charter and the general state laws relating to cities are usually the source of authority for the enactment of municipal ordinances. All legislative powers exercised by cities are considered to be powers delegated by the state legislature. Moreover, it is the American rule to enumerate in great detail in the charter the particular subjects relating to which municipal ordinances may be passed, and although usually some general language is used in the grant, the tendency of the courts is to construe a city's powers rather narrowly. There are some notable exceptions to the rules described. In several states the general ordinance power of cities is based on a constitutional guaranty of "home rule" (*see*); and in some instances the courts have recognized the ordinance power of the local communities as antedating and in some respects independent of legislative grants. In some instances, also, a broad general grant of powers by the legislature, either in lieu of, or in addition to, a detailed enumeration, has been effective. In many cases some ordinance powers are derived incidentally from general statutes, such as the street railway law, or the law for the incorporation of wire-using companies.

Scope of Municipal Ordinances.—As the purpose of ordinances is to give formal expression to the legislative will of the city with reference to the functions it has to perform, it is obvious that the scope of the ordinances is limited by the scope of the function (*see* MUNICIPAL GOVERNMENT, FUNCTIONS OF). It is further limited by the legislative will of the state as formulated in the statutes. Where a state law exists, a municipal ordinance contravening it, as a rule, would have no force, though an ordinance supplementing the law might be perfectly valid The importance of the municipal ordinances actually passed and in force varies greatly from state to state and from city to city, according to an extremely wide variation in general constitutional and legislative policies. For example, the body of ordinances of New York City is a trivial collection compared with the ordinances of Chicago or Philadelphia. A general distinction must be made between ordinances which are merely legislative in their character and ordinances which convey special privileges and, if accepted, establish a contractual relation between the city and certain private individuals or corporations. The former are subject to amendment or repeal by the city at will. The latter are usually unchangeable and irrevocable except with the consent of the beneficiaries. Purely legislative ordinances may be roughly classified as follows: (1) relating to the organization of the city government; (2) levying taxes, authorizing loans, and making appropriations; (3) initiating public improvements; (4) regulating the use of the streets and public places, including traffic ordinances; (5) the building code, including regulations as to the height, strength, materials, style, and safety of tenements as well as of all classes of public or semi-public buildings; (6) the sanitary code, including regulations for the abatement of nuisances, for drainage and plumbing, for the care of contagious and infectious diseases, for the carrying on of dangerous or disagreeable occupations, for the removal of dead animals, for the prevention of smoke, etc.; (7) regulating weights and measures and general market practices; (8) relating to the general welfare, order and good government of the community, including the prohibition of vicious and indecent conduct in public places, the regulation of billboards, the restriction of the liquor traffic, etc.; (9) regulating public utility services, rates and equipment, and determining the general rules under which revocable permits may be issued for the use of public property for private purposes.

Contractual ordinances usually include grants to railroad, street railway, telephone, telegraph, messenger, signal, electric light and power, central heating, refrigerating and gas companies. Water supply, sewerage, pipe line, pneumatic tube, electrical conduit, ferry, depot, market and garbage removal companies are also sometimes the beneficiaries of franchise ordinances.

Drafting, Publication and Passage of Municipal Ordinances.—Most of the general ordinances of a city are drafted by the city attorney or corporation counsel, usually at the

request of the mayor or the legislative body or some committee or individual connected with the city government. The sanitary code is generally drafted by the health department. Franchise ordinances have usually, in the past, been drafted by their beneficiaries, but this rule is being considerably modified in recent years. Particular ordinances which are the object of public agitation are occasionally drafted by committees of private citizens. The usual procedure requires all proposed ordinances to be referred to a general or a special committee of the city council and to be published in full in the council proceedings. Ordinarily an affirmative majority of all the members is required to pass an ordinance and a two-thirds majority to pass it over the mayor's veto. Proposed ordinances may usually be amended by the council at the same session at which they are to be passed, but generally they do not go into effect until published in full in the city's "official" newspaper. In some cities ordinances may be initiated by petition and passed by vote of the people without reference to the mayor's approval.

Enforcement of Municipal Ordinances.—The penalties which a city may impose for the violation of its ordinances are usually limited to small fines and short terms of imprisonment, or, in the case of franchises, to forfeitures. Enforcement of ordinances is through the police, special inspectors for special matters, the city's legal department and the lower courts, which, in the case of large cities, are usually special municipal courts of criminal and civil jurisdiction. In important matters, however, an appeal may be taken by either party to the higher state courts, and where large property rights are involved an appeal may be taken against the city to the highest federal courts.

See CITY AND THE STATE; COUNCIL, MUNICIPAL; DRAFTING OF LEGISLATION; LAW, ADMINISTRATIVE; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES; VETO POWER.

References: A. R. Hatton, *Digest of City Charters* (1906), III, IV; F. J. Goodnow, *City Government* (1904), ch. vii, *Municipal Government* (1909), ch. x; D. F. Wilcox, *Municipal Government in Michigan and Ohio* (1896); L. S. Rowe, *Problems of City Government* (1908), ch. vii; J. F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th ed., 1911); A. F. Cosby, *Code of Ordinances of New York City* (1910); W. B. Munro, *The Government of American Cities* (1912), ch. viii.

DELOS F. WILCOX.

ORDINARY. In England, an officer who had jurisdiction in ecclesiastical cases. In the United States, courts of ordinary formerly existed in New Jersey, South Carolina and Texas, with jurisdiction over the probate of wills and the administration of decedents' estates, and in South Carolina the ordinary was a judicial officer. The ordinary continues in Georgia, where he acts as probate judge and chief administrative officer of the county, limited in some matters by the grand jury. See COUNTY AND CITY GOVERNMENT. **Reference:** Bouvier, *Law Dictionary* (1897), II, 556.

J. A. F.

ORDNANCE, BUREAU OF. The Bureau of Ordnance is one of the bureaus of the United States Navy Department (*see*). Its operations cover the design and construction of guns, projectiles, armor, powder, torpedoes and mines. It operates a naval gun factory, a powder factory, and a torpedo station. **References:** Secretary of the Navy, *Annual Reports;* J. A. Fairlie, *National Administration of the U. S.* (1905), 160.

A. N. H.

ORDNANCE, CHIEF OF. The Chief of Ordnance is the officer of the United States Army charged with the supply of arms and ammunition for the military service. The Ordnance Department maintains five arsenals for the manufacture of munitions of war, namely: The Frankfort arsenal, at which artillery and small-arms ammunition is manufactured; the Rock Island arsenal, at which personal and field artillery equipment and supplies are manufactured, also small-arms and cavalry equipment; the Springfield armory, making rifles and other small-arms; the Watervliet arsenal making large guns, especially for coast defense and artillery equipment; and the Watertown arsenal, making gun carriages and artillery equipment. **References:** Secretary of War, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 145.

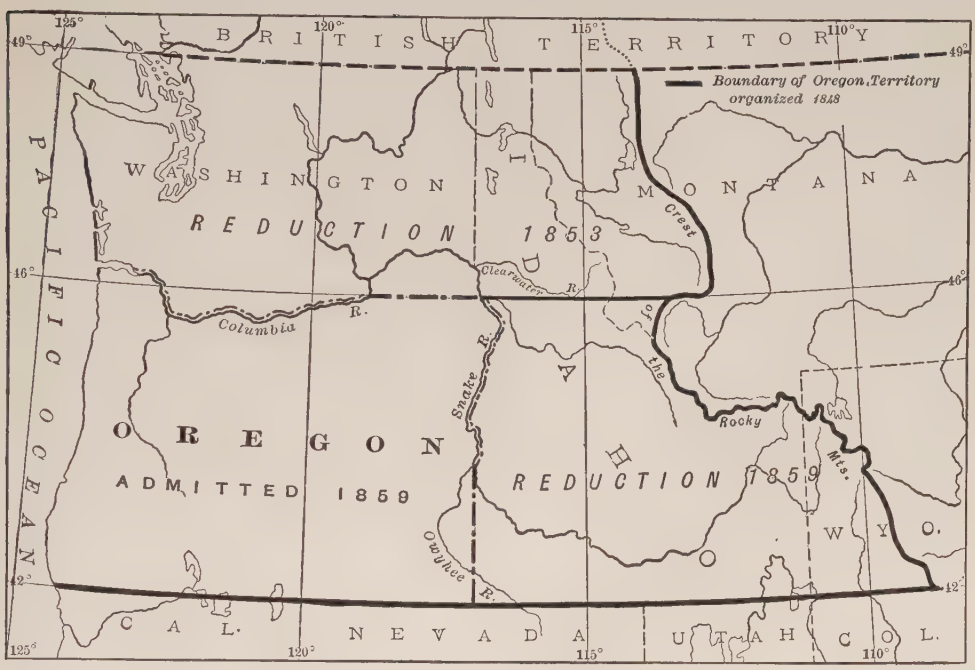
A. N. H.

OREGON

Early History.—The state of Oregon, child of the pioneer American community of the Pacific coast, has a history which is of special interest in its early and in its recent phases. Prior to the organization of Oregon Territory by Congress in 1848 the region west of the Rockies and between California and Alaska known as Oregon was subject to no settled jurisdiction. Yet American pioneer farmers had been going to the Willamette Valley overland for a number of years, following in the trail of the explorers, traders, and missionaries and as early as May, 1843, a provisional government was formed under the well-understood principles of compact. This government, as strengthened by certain enactments of the legis-

lative committee of 1844 and perfected by the adoption in 1845 of a revised organic law, ultimately united both American and British settlers in its support and proved adequate to the needs of the community until the United States government took control in March, 1849. The so-called Oregon question, already a generation old, had been settled by treaty in 1846 establishing the boundary between British and American territory west of the Rockies at the forty-ninth parallel (*see* NORTHWESTERN BOUNDARY CONTROVERSY; WASHINGTON).

Oregon has the county system of local government, the people of the county choosing every two years or four years, as the case may be, the county officers consisting of a county judge and a varying number of commissioners, also a sheriff, treasurer, clerk, surveyor, school superintendent, assessor, and coroner. Under a new law the county school superintendent becomes the head of a county board of education which has the duty of appointing a sufficient number of supervisors to inspect monthly all of the schools of the county, devoting a



BOUNDARIES OF THE STATE OF OREGON, SHOWING TERRITORIAL CHANGES

State Constitution.—Oregon became a state in February, 1859. A constitution had been adopted in convention more than a year previously. This document, as amended by statute in a few instances, provides the usual machinery of government for the state. There is an executive department headed by the governor who is chosen for the term of four years, and including also as elective officers a secretary of state, a state treasurer, an attorney general, a superintendent of public instruction, and a state printer. All are chosen for four years. The legislative assembly has two houses, a senate of thirty members chosen for four years by districts, and a house of representatives of sixty members chosen by districts for two years. The sessions are biennial and are limited regularly to forty days by a provision restraining members from drawing their *per diem* compensation, $3.00, for a longer period of service. There is a supreme court of five members elected for six year terms. Circuit judges are chosen by districts.

full day to each school. The superintendent makes one of the supervisors. The property of the county is taxed for the support of this system of supervision and also for the support of rural high schools established under certain restrictions and for a portion of the support of common schools.

A movement has been afoot for several years to secure a constitutional amendment designed to remodel fundamentally the frame of government as here outlined. At the general election in November, 1910, the reformers' plan was voted down but the idea persists and it may be institutionalized at any general election by gaining a favorable vote. There is a strong sentiment in favor of changing to a unicameral legislature by abolishing the present senate.

Initiative and Referendum.—The development of this constitution during the past ten or twelve years has brought Oregon prominently before the world as a pioneer in the progressive political movement. The document as adopted was marked by no specially original

feature. It was, however, reasonably satisfactory and since it could be amended only on the initiative of two successive legislative assemblies no change at all was made in it for more than forty years. In 1899, after successive appeals from the reforming element, the legislative assembly proposed the amendment which reserved to the people the right to initiate laws and constitutional amendments and also pass on measures adopted in the usual way by the legislative assembly. The succeeding assembly, in 1901, proposed the same amendment which thereupon went to the people at the general election in 1902. The vote stood 62,024 in favor and only 5,668 against.

Direct Primary.—This initiative and referendum amendment did not merely make a breach in the constitution; it provided a new political machinery by which modifications of the instrument could be secured easily and promptly at the will of the majority of voters. The immediate effect was to open a practicable way of securing remedial legislation for which the people had long been ready but which the political bosses and subservient legislatures had been unwilling to grant. Among these the first in importance as well as in time was a comprehensive primary election law which placed in the hands of the people directly the nomination of all state, county, and local officers. The reformers brought forward their initiative bill for this purpose at the general election of 1904, carrying it by an overwhelming majority. The direct primary has effected a revolution in Oregon politics by eliminating the caucus and the convention. It has resulted, naturally, in weakening the force of party attachments, a condition which proved so intolerable to the old-time leaders of the majority party that, in 1910, they developed an elaborate plan to circumvent the primary law by holding what they called "assemblies" both for state and county purposes. These were merely conventions carried a step further back and designed practically to restrain the voters of the party to the choice of the "assembly's" candidate at the primary election. But the people rose in rebellion against the "assembly," defeating a portion of its candidates at the primary and some of the others—including the candidate for governor—at the general election. They preferred an anti-assembly Democrat to an assembly Republican.

That party ties have become very loose is evidenced by the fact that the Oregon electorate, nominally Republican in nearly the ratio of two to one, has on three successive occasions chosen a Democratic governor; that at the general election in 1908 the people instructed the Republican legislative assembly to elect Mr. Chamberlain (then Democratic governor) to the United States Senate—an instruction which was unhesitatingly carried out; and that a similar instruction was executed in favor of Mr. Lane, a Democrat, in November, 1912. Besides the initiative and referendum and the primary election law, the "Oregon system" embraces the recall and a rigorous corrupt practices act (*see*).

Working of the Referendum.—The initiative and referendum have been used both to supplement and to restrict the work of the legislative assembly. Acts like the primary election law, the corrupt practices act, the local option liquor law and others which legislatures have always been chary about touching have been passed easily by the people. On the other hand, with some encouragement from the governor, a considerable body of legislation passed by recent assemblies has been referred to the people and by them has been rejected. One evil has been crowding the ballot, which in November, 1912, had on it thirty-eight distinct measures, all of which had to be considered by all voters. The result has shown some anomalies in the way of the passage of contradictory measures and even of some laws which public sentiment clearly fails to support. For these reasons the Oregon experience seems to suggest the wisdom of carefully safeguarding the initiative, perhaps by a provision requiring all initiative measures to be submitted first to the legislative assembly before going to the people for their vote. Among the constitutional amendments adopted in 1912 was the one extending the right of suffrage to women, which amendment had been proposed by initiative petition. The referendum, also, while amply justifying itself in principle, as has the initiative, has occasionally been used for sinister purposes by men who employed fraudulent means of raising petitions. In fact, petition "jobbing" has come into existence, men offering to procure as many thousands of names as might be wanted at a fixed price per name, sometimes as low as three and one-half cents. This again suggests a needed amendment making the use of money in circulating petitions a felony, and requiring those who demand a referendum on any measure to go to the county clerk's office or to some other repository of petitions to record this demand, just as men go to the election booths to record their preferences on men and measures. Up to the present time the recall has been but little used and while hot-headed persons have sometimes attempted to test its virtues in cases which hardly seemed to demand such drastic action, the good sense of the voters has generally prevented any serious abuse of the power.

On the whole, it should be said, that while some features of the system are in obvious need of amendment, and while evilly disposed men sometimes betray the confidence of the people, the principles involved in the system have already rooted deeply in this new western soil. They have imparted a freshness and vigor to the political life of Oregon which was unheard of in the days of dominant party conven-

tions, tractable legislatures, and old-fashioned senatorial contests.

See CONSTITUTIONS, STATE; INITIATIVE; LEGISLATION, DIRECT; PRIMARY, DIRECT; RECALL; REFERENDUM; STATE GOVERNMENTS.

References: F. Strong and J. Schafer, *Government of the Am. People* (Oregon ed., 1905), contains copy of state constitution and description of county government; F. N. Thorpe, *Federal and State Constitutions* (1909), V, 2983–3030; L. Pease, "Initiative and Referendum—Oregon's Big Stick" in *Pacific Monthly*, XVII (1907), 563–575; J. Schafer, "Oregon as a Political Experiment Station" in *Am. Review of Reviews*, XXXIV (1906), 172–176; P. S. Reinsch, *Readings in Am. State Government* (1911), 84–108. JOSEPH SCHAFER.

ORGANIC THEORY OF THE STATE. The organic theory of the state represents an attempt to interpret its genesis, organization and life in the light of biological laws and principles. It maintains that the state in its structure, processes of growth, and functions is essentially analogous to a living organism and that in consequence the science of the state is but a part of the larger field of natural science. The state, like animate objects, so the theory holds, comes into existence not by artificial mechanical processes but through natural processes; it possesses organs essentially like those of biological organisms and performs its functions according to natural laws. The early writers on the state, beginning with Plato and Cicero, were fond of personifying the state and of attributing to it the qualities of animate life. Mediaeval writers also, like John of Salisbury, Marsiglio and Althusius were fascinated with the biological analogy and later scholars like Fichte, Krause, Spencer, Schäffle, Lilienfeld and many others made it a part of their systems of political philosophy. Bluntschli surpassed all his predecessors by the exaggerated application which he made of the organismic conception. In his *Allegemeine Staatslehre* and in his *Psychologische Studien über Staat und Kirche* he argued that the state was not a mere artificial machine but a "living spiritual organic being," the "very image of the human organism." Indeed, he went so far as to impute sexual attributes to the state, personifying it as masculine as contradistinguished from the church to which he attributed the qualities of femininity. Herbert Spencer in his *Principles of Sociology* likewise developed the biological analogy and defended the "parallelism between social and animal life." To each he attributed a "sustaining system," a "distributing system," and a "regulatory system." Schäffle and Lilienfeld elaborated and defended the organic theory with great learning and ability. A more recent school of sociological writers, mostly French, have approached the subject through the new science of sociology. Among the more important of these writers may be mentioned Comte, Tarde, Letourneau, de Greef, Fouilleé and René Worms.

The chief criticism of the biological and sociological conceptions is that they rest on mere analogies and analogies, at that, which are often fanciful if not absurd. The parallelism between the state and biological and social organisms breaks down at many points. The units (cells) of a biological organism have no independent life of their own, no power of thought or will, no power of self-determination. Moreover, the laws of growth and decay which reign in the natural world do not govern in the realm of politics. An organism comes into being, grows and discharges its functions in obedience to the blind forces of nature; and it has no power of self-direction or adaptation; while on the contrary the state is created, changes its form and performs its functions by means of volition and conscious acts of men. It is what men make it, and is only, to a very limited extent, the result of natural laws.

See SOCIAL COMPACT THEORY; SOCIOLOGY; STATE, THEORY OF; and under POLITICAL THEORIES.

References: The literature dealing with the organic conception of the state is very extensive. The following works may be mentioned as especially useful: F. W. Coker, *Organismic Theories of the State* (1910); K. Franz, *Vorschule Zur Physiologie der Staaten* (1857); A. Kreiken, *Ueber die sogenannte organische Staatstherorie* (1873); H. Leo, *Studien and Skizzen zueiner Naturlehre des Staates* (1833); P. Lilienfeld, *Gedanken über die Socialwissenschaft der Zukunft* (1873–81); J. S. MacKenzie, *Intro. to Social Philosophy* (1895), 131–133; C. E. Merriam, *Hist. of Sovereignty since Rousseau* (1900), 87 *et seq.*; B. Schmidt, *Der Staat* (1896), Sec. II; G. Waitz, *Grundzüge der Politik* (1862); R. Worms, *Organisme et Societé* (1896). JAMES W. GARNER.

ORGANIZATION. Basis of Party Division.—There are two contradictory views of human nature which have to do with the dividing of citizens into parties. One is that man approaches perfection according as each individual is allowed to go his own way without coercion or guidance from others. The other is that man is a social being, that he realizes his true self only in organic relation with others; perfection is approached according as each individual finds his place in a just, and righteous state. The one view emphasizes the importance of the separate individual; the other gives emphasis to that of organization. Applied to the state, the individualist view would limit the field of government and leave to the citizen the widest possible range.

The First Parties.—In the organization of the government of the United States, Jefferson and the Republicans represented the individualists; Hamilton and the Federalists empha-

sized the importance of a strong central government. Hamilton, leaning on the commercial and capitalistic classes, so far as then developed, relied on internal and personal influence to attach the voter to the Federalist party. In order to protect the people against an over-centralized government, Jefferson organized in the voting precincts democratic clubs out of which, in a few months, grew up a great national party. The Federalists, who distrusted the masses and did not organize them locally, partly for lack of such local organization, after a few years ceased to exist as a party, and then the party name was for many years such a term of reproach that few liked to admit that they had ever belonged to it.

Whig and Republican Parties.—At a later day men trained in the school of Jefferson organized a new party called the National Republican (*see*), which in 1834 assumed the name Whig (*see*). Twenty years later certain of the Whigs and Democrats combined to create the present Republican party (*see*). The one form of party organization which has stood the test of time is that which Jefferson early shaped to preserve the freedom of the individual against over-much government and which was adopted by Whigs, Democrats and Republicans. The Democratic party of today is, in its form, the party which Jefferson founded. The Republican party of today takes its form from the same source. It adopted the name that Jefferson gave to his organization and has followed the forms of organization found in that party.

Party and Government Confused.—At first the party organization was quite distinct from the government and indeed was formed to oppose the administration, to protect the people from their government. A little later this party gained control of the national government; thereafter, inasmuch as from 1800 to 1860 the party of Jefferson was, under different names, almost continuously in power in the national government, the ordinary citizen ceased to distinguish clearly between party and government. Loyalty to the party was considered loyalty to the government; and from the standpoint of sentiment the party had the advantage, as being nearer to the people, since only through the party did the people have access to the government. Since the Civil War the Republican party has had almost continuous supremacy in national affairs during a period nearly equal to that of the Democratic party before the war. Thus the organization that was created to protect the people from over-much government became in course of time, in a certain sense, the government, and a competing organization arose to protect the people from the abuses of the party in power.

The Organization Becomes the Machine.—In the meantime the fundamental idea as to what constitutes a party organization has undergone a radical change. With Jefferson and Jackson as leaders the "organization" meant the mass of party members acting together to protect themselves against the few who through superior wealth and training were disposed to seize and hold the power of government. Since the Civil War the "organization" has gradually come to mean not the rank and file of the party but a distinct class of party officers and party workers. Party officers, party leaders and party workers are so strongly organized that they consider themselves and are considered to be "the organization," of which party members are supporters, but not members. As thus used the term means the machine which enables the party boss to control the government. The boss appeals to party loyalty and claims the support of every member of the party. The forming of a counter organization within the party is treated by the boss as an act of treason. The inner organization, which a hostile public stigmatizes as "the machine" (*see*), the political boss identifies with the great historic party deserving the support of every member. Thus the means that Jefferson designed as a protection for the people has to a considerable extent become a tool for the oppression of the unorganized public. These changes coincide with a revolution in the organization of the industrial world whereby large classes of the people have become dependent for a living upon great monopolistic corporations. To protect themselves, the classes whose interests are threatened organize for protection—labor unions and farmers' alliances are striking illustrations. In these various ways the field for organization has been greatly extended and the field for the independent individual is correspondingly limited.

See Boss; Committee, Party; Convention, Political; Machine, Political; Party Organization; Party, Place and Significance of; Tammany.

References: C. A. Beard, *Readings in Am. Government and Politics* (1911), 586–589, *Am. Government and Politics* (1910), 126–145; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II. 76 *et seq.*; J. Macy, *Party Organization* (1904), ch., i–ii; C. E. Merriam, *Primary Elections* (1904), ch. i; E. C. Meyer, *Nominating Systems* (1902), chs. i–iv; M. I. Ostrogorski, *Democracy and the Party System* (1910), chs. i–vi; P. S. Reinsch, *Readings on Am. State Gov.* (1911), 432, 454; D. G. Ritchie, *Principles of State Interference* (1891); H. Spencer, *Man versus the State* (1891); T. Roosevelt, "Machine Politics in New York City" in *American Ideals* (1897).

Jesse Macy.

ORIGINAL JURISDICTION. The authority or power of a court to take charge of an action when it is begun or instituted, as compared with appellate jurisdiction which is the right or power to review the decisions and findings of a lower court. A. C. McL.

ORIGINAL PACKAGE. The delegation to Congress of the power to regulate commerce with foreign nations and among the several states (Const., Art. I, Sec. viii, ¶ 3) restricts in some measure the exercise by the states of their police power and power of taxation (*see* COMMERCE, GOVERNMENTAL CONTROL OF; INTERSTATE COMMERCE AND CASES). In determining whether goods which have been brought into a state have ceased to be the subject matter of foreign or interstate commerce so that the restrictions arising from the commerce clause are no longer applicable to the exercise of state power with reference thereto, it has been found convenient to state the general rule that so long as such goods remain in the original package in which they have been transported into the state and in the hands of the person thus bringing them into the state, they are not subject to the exercise of state power; the converse of the rule being that when goods thus brought into the state have become mingled with other property by the breaking up of the original package or by its sale or transfer to another owner, the restriction no longer exists. As applied to imported goods the rule excludes the exercise of the police power (*see*) or the taxing power on the part of a state; for the exercise of any police power with reference to such goods would be a direct interference with the laws of the United States regulating importation, and the exercise of the taxing power would contravene the express provision that "no state shall without the consent of Congress lay any imposts or duties on imports or exports" etc. (Const., Art. I, Sec. x, ¶ 2). As to goods brought from another state the only restriction is that found in the commerce clause; but this has been held sufficient to exclude the exercise of the state police power as to the bringing into the state, or the holding for sale or selling within the state, of goods which are properly the subject of commerce so long as they remain in the original packages. Therefore, state restrictive legislation as to transportation, keeping, and selling intoxicating liquors were held invalid as to original packages until Congress enacted the so-called Wilson Bill (1890, 26 Stat. 313) which provided that such liquors should upon arrival at their destination in the state be subject to the operation of the laws of the state enacted in the exercise of its police power.

The same principle renders invalid the exercise of the state taxing power as to goods in the original packages either by way of a license tax on the privilege of selling or a discriminatory general tax on the property itself. But taxes not discriminatory may be levied on goods brought from another state which have reached their destination and are held for sale or other disposal. The form or size of the package is to be considered only for the purpose of determining whether the goods contained therein have been in good faith brought into the state and are being held in accordance with the usual course of business with reference to such goods.

See COMMERCE, GOVERNMENTAL CONTROL OF; INTERSTATE COMMERCE AND CASES; LIQUOR LEGISLATION.

References: Leisy *vs.* Hardin, 135 *U. S.* 100; Bowman *vs.* Chicago, etc., Ry. Co. 125 *U. S.* 465; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 77; E. McClain, *Constitutional Law in the United States* (1910), 158.

EMLIN MCCLAIN.

ORLEANS TERRITORY. After the annexation of Louisiana (*see*), Congress divided the region purchased from France into two territories (1804). The Territory of Orleans included that portion of the Louisiana purchase lying east of the Mississippi River and south of the Mississippi territory, that is, south of the thirty-first parallel, and that portion of the Louisiana purchase lying west of the Mississippi River and south of the thirty-third parallel. The remainder of the territory purchased in 1803 was called the District of Louisiana and its government intrusted to authorities of Indiana territory. In 1805 the District of Louisiana was erected into the Territory of Louisiana and the Territory of Orleans given a more liberal form of government exactly like that of the territory of Mississippi. The ownership of five of the parishes lying south of Mississippi—the so-called "Florida parishes"—was disputed between Spain and the United States and Spain retained control of these parishes until 1810 when by a revolution of the American settlers the Spanish power was overthrown. A few months later in 1810 a proclamation from President Madison declared that the land in dispute had at all times been part of the Louisiana purchase and directed the governor of the territory of Orleans to exercise authority over that region as a part of the territory of Orleans. In 1812 the territory of Orleans was admitted into the Union as a state under the name of Louisiana, with boundaries as they now are. See FLORIDA ANNEXATION; LOUISIANA ANNEXATION; WEST FLORIDA. **Reference:** F. N. Thorpe, *Federal and State Constitutions* (1909).

W. L. F.

ORPHANS' COURT. See COURT, ORPHANS'.

OSBORN vs. BANK OF UNITED STATES. The bank of the United States, chartered by an act of Congress, brought a suit in the proper federal court of Ohio, in 1824, to restrain Osborn and others, as state officers, from collecting a state tax on the bank (9 *Wheaton*, 738). The trial court rendered a decree against the state officers and they appealed to the Supreme Court of the United States, contending, first, that the federal courts were without authority under the Constitution to

entertain such suit, and, second, that the suit was in effect one against a state and therefore within the prohibition of the Eleventh Amendment. With reference to the first contention it was held that as the bank existed only under and in pursuance of the laws of the United States, a controversy to which it was a party was a case arising under the laws of the United States and therefore cognizable in the federal courts (Const., Art. III, Sec. ii, ¶ 1), although the subject matter of the litigation might not be such as of itself to bring it within the scope of the federal judicial power (*see* COURTS, FEDERAL, JURISDICTION OF). With reference to whether the suit was against a state within the prohibition of the Eleventh Amendment, it was held that as the state of Ohio was not formally a party to the record the provisions of the amendment were not applicable; but in this respect the case has not been followed in later decisions (*see* STATES AS PARTIES TO SUITS). On the fundamental question as to the exemption of the United States Bank from state taxation, the principle announced in McCulloch *vs.* Maryland (*see*) was re-affirmed.

E. McC.

OTIS, JAMES. James Otis (1725–1783) was born at West Barnstable, Massachusetts, February 5, 1725. In 1748 he was admitted to the bar, and began practice at Plymouth, but removed to Boston in 1750. Here he rose rapidly to a foremost place at the bar, and was appointed advocate-general for Massachusetts. In 1761, however, as counsel for merchants of Boston and Salem, he resigned his office and made a notable argument against writs of assistance (*see*). For the next few years he was one of the leaders of the colonial opposition to Great Britain. In May, 1761, he was elected a representative to the general court; and in 1764 published *The Rights of the British Colonies Asserted and Proved*. He was a member of the committee which recommended the calling of the Stamp Act congress, sat in the congress as a delegate, and served on the committee which drafted the address to the House of Commons. In 1766 he was elected speaker of the Massachusetts house, but the choice was negatived by Governor Bernard; and in 1768 he was a member of the committee which drew up the Massachusetts circular letter. In September, 1769, he was assaulted by a customs officer, and his mind impaired. He died at Andover, Massachusetts, May 23, 1783. See REVOLUTION, AMERICAN, CAUSES OF. **References:** W. Tudor, *Life of James Otis* (1823); John Adams, *Works* (1850–56), I, II, X; R. Frothingham, *Rise of the Republic of the U. S.* (6th ed., 1895), ch. v.

W. MacD.

OUTDOOR RELIEF. Many students of social questions favor the abolition of outdoor relief from public sources, on the ground that such assistance should be left to the generosity of individual givers and charitable organizations. They maintain that outdoor relief tends to breed pauperism by destroying self-respect, discouraging thrift, and creating the habit of dependence. They represent that public officers are often corrupt, and when they are honest, lack the insight and discrimination necessary to the wise distribution of such assistance.

Those who favor outdoor relief maintain that the abuses are unnecessary, and that public officers can be so instructed and so restricted by law as to avoid them. They maintain that outdoor relief, properly distributed, is much more economical than indoor relief; that it obviates the cruelty of sending decent poor persons to the almshouse; and that it avoids the necessity for breaking up families and separating children from their parents and from their brothers and sisters.

Public outdoor relief has now for some years been abolished in New York, Brooklyn, Buffalo and other important communities; and it is claimed that there has been little if any increase of suffering among the poor, while there has been a great relief to the tax payers, and a great stimulation of wise private endeavor.

Recently there has been a strong reaction in favor of public pensions for widows to enable them to care for their children at home instead of giving them up to strangers. The legislatures of 1911 in Ohio and Missouri passed laws expressly authorizing such pensions, while public officers in some of the states have instituted them under existing laws.

Outdoor relief may be administered either in the form of cash—usually in monthly installments—or in the form of material relief—provisions, fuel, clothing, etc. Those who favor cash payments maintain that many poor people can do better for themselves with a small sum of money than with material which may or may not be what is most needed. Those who favor material relief maintain that money is likely to be spent for liquors or other superfluities, and that material supplies can be purchased by the public authorities at wholesale, so that the same amount of money will go much further for actual relief. It is generally agreed that there is need of much greater wisdom, discrimination and efficiency in the administration of outdoor relief than has usually been exercised. Public sentiment is growing in favor of the careful instruction of the officers who are called upon to administer it.

See CHARITIES; POVERTY AND POOR RELIEF.

References: E. W. Capen, *Historical Development of the Poor Law of Connecticut* (1905); New York State Board of Charities, *Charity Legislation in New York State, 1609–1900* (1904); Indiana State Board of Charities, *Development of Public Charities and Correction in the State of Indiana, 1792–1910* (1910); H. Shaw, *Settlement Laws of Mass.* (1900); E. Wade, *Code Relating to the Poor of N. Y.* (1890); H. A. Nelson, *Poor Laws*

of the State of N. Y. (1871); A. G. Warner, *American Charities* (1908); J. Cummings, "Massachusetts Poor Laws" in Am. Economic Assn., *Publications*, July, 1895; James Devon, *Criminal and the Community* (1912); August Drahms, *The Criminal, His Personnel and Environment* (1900); Cesare Lombroso, *Crime Its Causes and Remedies* (1911).

HASTINGS H. HART.

OVERSEERS OF THE POOR. Overseers of the poor are officers charged with the care of the poor and unfortunate. They are either local officials chosen especially for the office or they are members of some board to which the care of the poor has been assigned by statute. The jurisdiction of such an individual official or board in reference to the poor will depend upon the unit or units of local government concerned; for the township, the county, or the township and county combined, may provide for the needs of the poor. The almshouse is usually a county house, and the poor-farm a county farm. The selectmen in New England, the township trustees in some states, the justices of the peace in others, or the county board of supervisors or commissioners in still others, may have general charge of and be considered in all respects as overseers of the poor and unfortunate. Again, district officers, varying in number from one to three or more, may be found in some places.

The duties and functions of the overseers of the poor are both difficult and delicate. First of all the question of what constitutes a legal settlement must be determined—a matter which must frequently be brought before the courts for adjustment. In certain cases the overseers are required to fix the care of an unfortunate individual upon some relative. They may also be required to bind out minors as apprentices, if it appears that such minors are likely to become a public charge. To care for the needy sick and to return non-resident poor to their proper place of residence are in other jurisdictions among the specified duties of overseers.

See COUNTY AND CITY GOVERNMENT; OUT-DOOR RELIEF; POVERTY AND POOR RELIEF; TOWNS AND TOWNSHIPS.

References: A. Shaw, "Local Government in Illinois"; E. R. L. Gould, "Local Government in Pennsylvania;" E. W. Bemis, "Local Government in Michigan and the Northwest;" E. Ingle, "Parish Institutions of Maryland," all in *Johns Hopkins University Studies* (1883), I, iii, v, vi; G. E. Howard, *Local Constitutional Hist.* (1889), I, 191; J. A. Fairlie, *Local Government* (1906), 159, 178; statute laws of the several states.

BENJAMIN F. SHAMBAUGH.

OYER AND TERMINER, COURT OF. See COURT OF OYER AND TERMINER.

OYSTER COMMISSIONS. Commissions formed in a number of coastwise states for the control of the oyster and other shellfish industries; sometimes constituting a branch of fish commissions (*see*). Their most important duties are enforcing the oyster laws and regulations, surveying the state waters, and selling or leasing bottoms for oyster planting. See FISH COMMISSIONS.

H. M. S.

P

PACIFIC BLOCKADE. Pacific blockade is regarded as a measure of constraint short of war. It consists in the closing of a port or ports of one state by the forces of another state or of other non-belligerent states. This device was first resorted to in the case of the closing of the Greek ports by the Powers in 1827, and has been tried under varying conditions since that time. The United States has generally maintained that such measures cannot be held to affect states not concerned in the operations. The general opinion at present is that the effects of pacific blockade should be confined to the blockading parties. See BLOCKADE; INTERVENTION; WAR, CARRYING ON.

References: A. E. Hogan, *Pacific Blockade* (1908); *U. S. Foreign Relations, 1897*, 253–255, *1898*, 384, *1903*, 417 *et seq.* G. G. W.

PACIFIC ISLANDS, DIPLOMATIC RELATIONS WITH. The United States was early interested in the islands of the Pacific, on account of the large number of American ships which traded in that ocean. In 1813 Captain Porter, in the frigate *Essex*, formally occupied Madison Island, one of the Marquesas group, built a fort and a village, and left a garrison, but his action was not ratified by the government. In 1829 Captain Finch negotiated with the island chiefs in order to improve American relations; in 1855 a government exploring expedition made agreements with various native authorities for the protection of American consuls, seamen and vessels.

Hawaii (*see*) was early taken under a virtual protectorate; representations were made to France in 1842 and 1851, and to England in 1843, that the United States would object to their seizure of the country; and marines were landed to preserve order in 1874, 1889, and 1893. A treaty of commerce was made in 1849, and of reciprocity in 1875, which, when renewed in 1884, granted Pearl Harbor as a coaling station. Samoa (*see*) made a commercial treaty in 1878, and gave Pago-Pago for a coaling station; from that time until 1899 the United States was involved in disputes with England and Germany over the sovereignty and the government of the islands.

Treaties providing for extraterritorial jurisdiction by American consuls were negotiated with Borneo, 1850, Samoa, 1878, Madagascar, 1881, and Tonga, 1886. Congress, in 1860, invested American consuls with extraterritorial functions in all other islands not inhabited by civilized people.

The United States took little part in the international scramble for the independent Pacific islands, 1880–1900, although it could have done so with success since some of them were in undisturbed possession of American citizens.

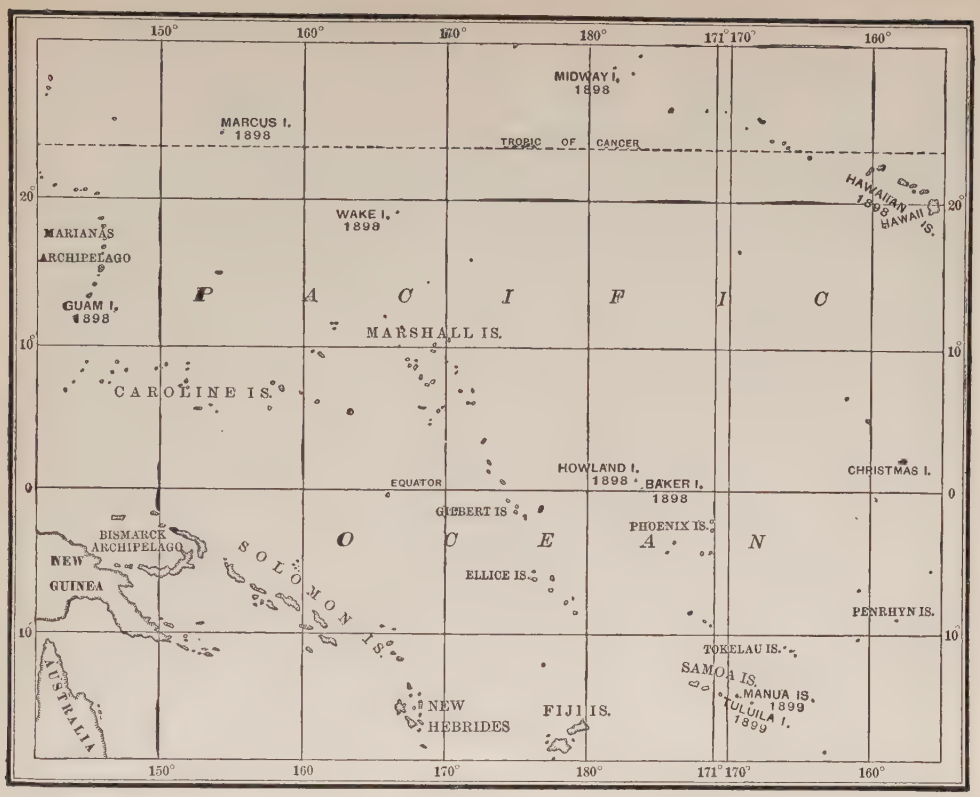
See DEPENDENCIES OF THE UNITED STATES; GUAM; HAWAII; SAMOA; map on opposite page.

References: J. B. Moore, *Digest of Int. Law* (1906), I, 475–580; A. B. Hart, *Foundations of Am. Foreign Policy* (1901), ch. v; J. B. Henderson, *Am. Diplomatic Questions* (1901), 205–286; W. F. Johnson, *Century of Expansion* (1903), ch. viii; E. J. Carpenter, *America in Hawaii* (1899); A. C. Coolidge, *U. S. as a World Power* (1908), ch. xvii; J. M. Callahan, *Am. Relations in the Pacific and the Far East* (1901). GEORGE H. BLAKESLEE.

PACIFIC RAILROADS. From the first agitation for a transcontinental railroad the usual name suggested was Pacific Railroad. Surveys began in earnest about 1852, but construction was delayed, partly because of the rivalry of the northwest and southwest as to the point of departure: Illinois being the champion of a road which would start at Council Bluffs; Missouri standing out for a road which would leave the Missouri River at a point at or near Independence. Elaborate reports of the surveys showed a convenient pass from the headwaters of the Platte to Salt Lake; and another around the Rocky Mountains to the south.

Charters and Routes.—The main charters of the roads were enacted, July 1, 1862; supplementary charters, July 27, 1866, and March 3, 1871. Inasmuch as they were to run almost entirely through regions where there were no states, the charters were granted by the Federal Government. By various acts of Congress, provision was made for the Union Pacific, west from Council Bluffs; the Central Pacific, east from San Francisco; the Kansas Pacific from Kansas City to Denver; the Southern Pacific from New Orleans to Los Angeles; the Northern Pacific from St. Paul to Puget Sound; the Texas and Pacific from Shreveport westward. All the roads mentioned, together with a so-called Central Branch running northwest from Kansas City, received federal aid by the gift of public lands, or the use of public lands, or both, as did the Sioux City and Pacific, Atlantic and Pacific (Santa Fé), and the Burlington and Missouri River in Nebraska.

The first through connection was made by the Union and Central Pacific Railroads which



PACIFIC ISLANDS ANNEXED TO THE UNITED STATES

joined their rails at Promontory Point, May 10, 1869. The Southern Pacific completed its through line in 1881; the Northern Pacific in 1883. The fourth transcontinental line to be completed was an unsubsidized road, the Atchison, Topeka and Santa Fé, from Kansas City, by the southern route, to San Francisco, opened in 1883. Large quantities of land grants were eventually forfeited for failure to construct in the required period.

The name Pacific has also been adopted by various private roads, as the Missouri Pacific, the Western Pacific, the Northwestern Pacific, and others, and by the Canadian Pacific, which is aided by the Canadian Government.

Besides the aided roads, three important private lines to the Pacific coast have been completed up to 1912—the Great Northern from St. Paul to Puget Sound, the Chicago, Milwaukee and Puget Sound, and the Denver and Rio Grande, and Western Pacific line from Denver to San Francisco. The Southern Pacific system also has a line from the vicinity of Ogden to the Columbia River and Portland.

Government Aid.—Amost all the principal of the bonds issued by the United States government in aid of these railroads ($64,623,512) was eventually repaid between 1897 and 1899, together with the total of the interest payments (about $63,196,000); but no interest upon these payments was exacted for the average term of twenty years between the outlay and the recompense.

The three great land grant roads, the Northern Pacific, the Union and Central Pacific (since consolidated into the Southern Pacific) and the Southern Pacific, proved up on their land grants. Where settlers had already come in, the railroads were allowed to replace that land with "selections" made outside the land grant line, and that privilege has been used in some cases to get possession of valuable coal and timber lands. On the retained government sections, one-half the whole land within the two lines parallel with the railroad and ten miles distant on each side, the Government charged $2.50 an acre instead of $1.25. The roads were bound to transport government freight on special terms.

Responsibilities of the Roads.—By an act of August 7, 1888, they were obliged to allow telegraph lines to be constructed on their right of way, which was, throughout, a gift of the Government, so far as private parties had not already acquired title. The roads for a long time resisted the repayment of the government subsidy bonds on the ground that they were poor; had built branches without a subsidy; and had performed a great public service.

Pacific railroads were a political necessity because California felt very independent in the sixties and was at an immense distance by sea;

but this was the first case in the history of the world where great railroads had been built into a totally unsettled region; and the constructors of the roads took many risks for which, however, they have since received a rich reward.

So long as the bonds were outstanding the Federal Government had a representation in the directorate of the roads; and the public land officials have always been necessarily in close touch with the land grant roads. Some stretches of the land grant were forfeited because the roads were not completed at all, or not completed within the contract period; this gave rise to a great confusion of titles among those who bought the railroad land in good faith. Most of such titles were eventually adjusted by the Federal Government favorably to the occupiers.

See PANAMA CANAL; POST ROADS; RAILROADS, PUBLIC AID TO; TRANSPORTATION BY GOVERNMENT.

References: J. P. Davis, *Union Pacific Railway* (1894); E. V. Smalley, *Northern Pacific Railroad* (1883); W. F. Rae, *Westward by Rail* (1874); Poor's *Manual of Railways* (annual); G. M. Dodge, *How We Built the Union Pacific* (1910). ALBERT BUSHNELL HART.

PACIFIC SLOPE

Topography.—No section of the Union is more clearly marked out by its physical character and its special social and political conditions than the area west of the tributaries of the Colorado and Missouri rivers. The Pacific slope declines steeply from the summit of the Sierras and Cascades westward, a region of bold and confused mountains enclosing the great valleys of the interior of California, Oregon and Washington. In addition there is the upper valley of the Columbia, and its tributaries, which, though different in contour and climate from the coastal strip, is included in the states of Oregon and Washington.

Timber, Fisheries and Mining.—Till the discovery of gold in 1848, this region had only three products that the world wanted; hides from the great cattle ranges of southern California, furs from the Puget Sound region, and timber; and the first two have nearly disappeared. In most places where a steer could live, regular crops can be grown; and even in the heart of the mountains it pays better to farm than to catch animals for their pelts.

The lumbering industry, however, has become enormous. Nowhere on the face of the globe was there, in 1850, such a stand of timber within easy reach of tide water. The trees over great areas were enormous in size and of magnificent quality, easy to get, easy to saw, and easy to ship. Hence for more than half a century the saw mill has been eating into the timbered areas. Large parts of the coastal plain of Washington have been cut over and the blackened stumps, almost indestructible by time, make desolate the landscape for hundreds of miles. The soil underneath is fertile but it costs from $50 to $200 per acre to get out the stumps in such a region. Lumbering in general has been wasteful and there has been great destruction from fire.

A third large industry of the Pacific coast is the fisheries, particularly the salmon on the Columbia in Puget Sound and the off-shore fisheries for halibut and other kinds which has now extended northward into Alaska. A considerable amount of the market on the Atlantic Coast is supplied by transcontinental shipment from this source.

Mining is important in all the states; coal in Washington, gold in Oregon, copper and gold in California. The placer gold deposits throughout this region, and particularly on certain of the streams coming down from the Sierra Nevadas, have been worked over, but gold mining on an elaborate scale is an important industry in California and elsewhere. One type is the extraction of gold bearing quartz from which the metal is obtained. Another is to follow the "fossil placers," that is old beds of streams covered over with a bed of lava. Another type is the gold dredging method, in which enormous amounts of gravel are handled by machinery. Probably a large amount of gold will eventually be located in Oregon and Washington. In the interior basin of the Columbia there is coal. Oil is abundant in several parts of California and furnishes a valuable cheap fuel.

Agriculture.—The main industry of all these states is still agriculture; and California is the only state in the Union in which there are agricultural estates of thousands of acres, fruit ranches, wheat ranches, raisin ranches, wine ranches, brandy ranches, leased or managed for the benefit of the owners. For the raising of grain, particularly of wheat, the plains of central California are especially adapted. About 1880 it was discovered that a range of rolling hills of blown material called the Pelouse District in eastern Washington was extraordinarily fertile; and as the rainfall is sufficient, this has become a great area for wheat growing, and has taken on itself the name of "Inland Empire."

A great industry in fruit has sprung up all along the coast, walnuts, olives, prunes, raisins, oranges and lemons (commonly grouped as "citrus") small fruits, and in the north, apples (particularly in certain sheltered parts

of the Columbia valley). Much of this growth has been well protected by the tariff from competition with the Mediterranean. Wine is a particular industry in California, and it is the only part of the United States in which native wines are widely used.

Population.—The population of the Pacific Coast is very complex. From 1900 to 1910 it increased from 2,416,692 to 4,192,304, a gain of 73.5 per cent. There are still a few tribes of Indians. The forty-niner movement brought people to California from all over the world, and it has since been receiving samples of almost all the immigrant races. The population of California shows the effect of this mixture of elements, and of the irregular and violent conditions of the early state. As a community California is accustomed to listening to extreme doctrines on all political and social subjects. Oregon, first settled half a century ago by eastern people, was long singularly unprogressive; but, being set off very much by itself, has suddenly taken up new methods of government and has led all the states in the Union in its adoption of the primary in the direct election of United States Senators, the initiative, referendum and recall, and the short ballot. Woman suffrage was adopted in Washington in 1910, in California, 1911, and in Oregon, 1912. Washington, with the exception of Slavs at Seattle, has a population containing few non-English elements. All the states have two Asiatic elements, the Chinese since 1850, the Japanese since about 1890, who have contributed of their labor to the improvement of those states but who are looked upon with aversion by most of the white people, partly from an unfounded idea that they lower the rate of wages, but chiefly from an instinctive objection to allowing a non-Caucasian race to grow up and to repeat with greater difficulties the experience of the southern states with an African race.

Characteristics.—The people of the Pacific Coast are so far from the great centers of the east that they have their own press, and to a considerable degree their own political system. The people of California, after forty years of political and economic control by the railroads of the state, in 1910 overthrew that domination. All the states have for many years had a good educational system and California boasts the highest average cost per pupil that is expended in any state in the Union. They all have state universities, and there are two in Washington, where the main centers of population are four hundred miles apart. They all have a system of high schools. In the close relation between grade school, high school and university system, they resemble the great middle western states.

The Pacific coast as the point of departure for commerce to Asia is especially interested in all Oriental problems. There was a time when it seemed likely to play some independent part but it has long been bound to the East by the railroads (*see* Railroads, Pacific). The Panama Canal (*see*) specially interests the coast, as giving it a competing water transportation to the Gulf of Mexico and the whole Mississippi valley. California, particularly southern California, is a resort for travelers and health seekers; and the magnificent mountains, including the Sierras and the snow clad peaks of Oregon and Washington, are likely to attract more and more people from the East.

See American Government and Geography; Far West; Frontier in American Development; Physiography of North America; Public Lands and Public Land Policy; Pacific Railroad; West as a Factor in American Politics.

References: H. H. Bancroft, *Hist. of California* (1886–1890), *Hist. of the Northwest Coast* (1886), *Hist. of Oregon* (1886–88), *Retrospect, Political and Personal* (1912); N. S. Shaler, *The United States* (1890), I, 341–374; list of state histories in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 374; bibliography in *ibid*, §§ 215, 216; Joseph Le Conte, *Autobiography* (1903).

Albert Bushnell Hart.

PAINE, THOMAS. Thomas Paine (1737–1809) was born at Thetford, England, January 29, 1737. He came to America in 1774 at the suggestion of Franklin, who had been attracted by his ability as a writer. In January, 1775, he became editor of the *Pennsylvania Magazine*. The publication of a pamphlet entitled *Common Sense*, in January, 1776, established his literary reputation, and contributed powerfully to solidify opposition to Great Britain and a desire for independence. A series of papers entitled *Crisis*, begun in December, 1776, was widely read. After a brief service in the army, he became secretary to the committee of Congress on foreign affairs, but was dismissed in January, 1779, in consequence of the Silas Deane controversy. Subsequently he acted for a time as secretary of the Pennsylvania assembly, and in 1781 accompanied Henry Laurens on his mission to France. In 1791 he published in England *The Rights of Man*, in reply to Burke's *Reflections on the French Revolution*. For this he was tried for treason and outlawed, but escaped to France, where he was elected a member of the National Convention. His moderate republicanism, together with his efforts to save the king, earned him the hostility of the Terrorist leaders, and he was imprisoned for a year. In 1794–95 he was again in the Convention. In 1802 he returned to the United States and was befriended by Jefferson. He died at New York City, June 8, 1809. See Revolution, American, Causes of. References: Thomas Paine, *Writings*, M. D. Conway, Ed. (1894–96); M. D. Conway, *Life of*

Thomas Paine (1892); J. Cheetham, *Life of Thomas Paine* (1809); E. Sedgwick, *Thomas Paine* (1899). W. MacD.

PAINS AND PENALTIES, BILL OF. A special act of the legislature, which inflicts punishment less than death, for high offenses such as treason and felonies, without judicial procedure. It differs from bills of attainder in that the latter inflict the punishment of death, but bills of pains and penalties are included within the meaning of the federal constitutional provision, forbidding forfeiture of property, or corruption of blood beyond the life-time of the person attainted (United States Constitution, Art. III, Sec. iii, ¶ 3). See Attainder. References: W. W. Willoughby, *Constitutional Law of U. S.* (1910), II, 801; Cummings *vs.* Missouri, 4 *Wall.* 277; 18 *L. Ed.* 356. H. M. B.

PAIRS, LEGISLATIVE. A term referring to the practice of members of a legislative body, by which two members of opposing parties agree to refrain from voting on a prescribed subject, or to be absent during a certain time. First used in the United States House of Representatives in 1839. O. C. H.

PANAMA CANAL

Problems.—Construction began in a preliminary way in 1904, but before the work could be started according to comprehensive plans, it was necessary as a preliminary to solve three problems:

(1) The canal zone, including the cities of Panama and Colon, had to be put in sanitary conditions. In 1904–06, this work was thoroughly done by Colonel William C. Gorgas, a member of the Isthmian Canal Commission, and the head of the Department of Sanitation on the Isthmus. Since 1906, the health record on the Isthmus has been everything that could be desired.

(2) During these two years of preparatory work, it was uncertain whether the work had better be done under contract or directly by the government. The difficulty of securing satisfactory contracts fortunately led the United States to decide to proceed with the execution of the work. Congress required the President to appoint a commission of seven to construct the canal. After experimenting with two civil commissions, President Roosevelt decided to place the work in charge of a commission with an army officer as its chairman, and to place as much authority as possible in the chief engineer. The chief engineer first appointed, Mr. John F. Wallace, and also his successor, John F. Stevens, were handicapped and resigned because they did not have sufficient authority. Colonel George W. Goethals, whose extraordinary success in the construction of the canal has commanded the admiration of the entire world, was made both chairman of the Commission (April 1, 1907) and also chief engineer and *de facto* governor of the Canal Zone.

(3) The most important preliminary question to settle was whether the canal should be constructed as a sea-level waterway or whether it should have locks. The majority of American engineers favored the lock project; foreign engineers and certain influential people in the United States considered the sea-level project preferable; the decision finally was in favor of the lock project. This was most fortunate; it has since become evident that the sea level project would have been inferior to the plan for a lock canal that was adopted.

Description of the Canal.—The Panama Canal extends from Limon Bay near Colon, to Panama Bay at a point near the city of Panama. The length of the Canal, from 40 feet depth of water in the Caribbean Sea to an equal depth in the Bay of Panama, is 50 miles, 4½ miles at each end consisting of a submerged channel through the shore bays. The distance from the shore line to shore line is thus 41 miles. Through three-fifths of its length, the canal is in the valley of the Chagres River, a typical tropical stream subject to great variations due to sudden floods.

In detail, the route is as follows: through Limon Bay there is a submerged channel 4½ miles to the shore line, from which the canal extends through a swampy region 3½ miles to a point where the Chagres River has made an opening in the Gatun hills, a low range extending nearly parallel to the coast. This break made by the Chagres River in the Gatun hills is closed by a dam 7,700 feet in length, which converts a large part of the Chagres River valley into a lake, the surface area of which is 164 square miles. The level of this lake will vary from 82 to 87 feet above the sea; the normal stage will be 85 feet above the sea level. To overcome this difference in level, three locks are constructed at Gatun each with a lift of 29 feet. The locks are built in twins, there being two upon each level. Their clear length is 1,000 feet, width 110 feet and depth 40 feet. From the Gatum locks and dam, the canal route is in Gatun Lake for 22 miles to Gamboa where, at a sharp bend in the Chagres valley, the canal leaves the river basin and cuts through the Empire and Culebra hills, which here form the divide between the two oceans. The length of the deep cut will be

between 7 and 8 miles, the deepest portion being through the Culebra hill. At Pedro Miguel, 6½ miles from the shore line of the bay of Panama, the canal is lowered by one lock with a lift of 30 feet to a small artificial lake, 1½ miles in length, formed by the construction of a dam and two locks at Miraflores, five miles from the Panama shore line. The locks at Pedro Miguel and Miraflores, like those at Gatun, are also constructed in pairs. From Miraflores, the canal extends to the shore line at Balboa and thence by a submerged channel, 4½ miles in length, into the bay of Panama.

The dimensions of the Panama Canal far exceed those of any other canal in the world with the exception that the locks of the Kiel Canal, when rebuilt, will be larger. In the earth sections and submarine portions, the depth is 41 feet, through the deep cut it is 45 feet. The standard width of the dredged sections is 500 feet; in the lake, the channel will vary from 1,000 to 500 feet in width. The width of the deep cut at the bottom will be 300 feet.

Completion of the Canal in 1914.—Although work began in a preliminary way in 1904, excavation work on a large scale did not begin until 1907. The work of excavation and of constructing the dam and the locks was completed before the end of 1913. This was nearly two years in advance of the time originally set for finishing the work. The first complete passage of the canal was made by a crane boat in January, 1914; use of the canal by merchant shipping began a few months later.

The Canal and the Navy.—The most obvious result accomplished by the construction of the canal is an increase in the efficiency of the American navy. The distance via the Straits of Magellan between our two seaboards is from 13,000 to 15,000 nautical miles. A fleet upon the Atlantic cannot strike a blow in defense of the Pacific coast. The Panama Canal reduces the distance between the seaboards to 5,000 miles and makes it possible for fleets to be transported from one ocean to another in a relatively short time. It is said, with rough accuracy, that the canal doubles the ability of the Navy to protect the two seaboards of the United States.

Commercial Value of the Canal.—The Panama Canal will reduce the distance from New York to San Francisco 8,000 miles, and from New Orleans to San Francisco 9,000 miles; the west coast of South America will be brought 5,000 miles nearer New York, and 6,000 miles nearer New Orleans. The distance from New York to Japan and Australia will be shortened nearly 4,000 miles. A special "Report on Panama Canal Traffic and Tolls" presented to the President in 1912 predicts the value of the Canal as a commercial highway and as a source of revenue to the United States as follows:

> The shipping using the Panama Canal may be subdivided into three classes—that engaged in the coastwise commerce between the two seaboards of the United States, American shipping employed in carrying the foreign commerce of the United States, and foreign shipping carrying commerce of the United States and foreign countries. The following table states the probable volume of each of these three classes of shipping during the first two years of the operation of the canal, during 1920 and during 1925:

	Average Per Annum During 1915 and 1916	1920	1925
Coast to coast American shipping	1,000,000	1,414,000	2,000,000
American shipping carrying foreign commerce of the United States	720,000	910,000	1,150,000
Foreign shipping carrying commerce of the United States and foreign countries	8,780,000	11,020,000	13,850,000
Total	10,500,000	13,344,000	17,000,000

> The gross revenue that may be secured from the Panama Canal, with tolls at $1.20 per net ton upon all merchant vessels, is stated in the following table:

	Average Per Annum During 1915 and 1916	1920	1925
Coast to coast American shipping	$1,200,000	$1,696,800	$2,400,000
American shipping carrying foreign commerce of the United States	864,000	1,092,000	1,380,000
Foreign shipping carrying commerce of the United States and foreign countries	10,536,000	13,224,000	16,620,000
Total	$12,600,000	$16,012,800	$20,400,000

> It has been estimated by the Isthmian Canal Commission that the annual expenses . . . for the operation and maintenance of the canal and the sanitation and government of the zone will amount to $4,000,000. The canal will cost $375,000,000. . . . The interest on this sum at 3 per cent per annum will amount to $11,250,000. The canal concession treaty between Panama and the United States requires the United States, beginning in 1913, to pay $250,000 annually to Panama. Thus the total annual expenses . . . will be $15,500,000.

See CANAL DIPLOMACY; CANAL ZONE; FRENCH PANAMA CANAL; NICARAGUA CANAL POLICY; PANAMA RAILROAD.

References: Isthmian Canal Commission, *Report* (1899–1901); Isthmian Canal Commission, *Annual Reports* (1906–1913); W. F. Johnson, *Four Centuries of the Panama Canal* (1906); H. L. Abbot, *Problems of the Panama Canal* (1907); C. H. Forbes-Lindsay, *Panama*

and the Canal Today (1910); F. H. Latané, *Amer. as a World Power* (1907), ch. xii; E. R. Johnson, "Report upon Panama Canal Traffic and Tolls" (1912), *Elements of Transportation* (1909), chs. vii, xx, also in Amer. Acad. of Pol. Soc. Science, *Annual*, XIX (1902), 1–23, in *Political Science Quarterly*, XVIII (1903), 197–215, in *Quarterly Journal of Economics*, XVI (1902), 514–536, XVII (1903), 529–575, in *Sen. Doc.*, 62 Cong., 2 Sess., No. 575, in *ibid*, 62 Cong., 2 Sess., No. 875; American Geographical Society *Bulletin*, No. 35 (1903), 163–176, 481–491, *Canal Record* (weekly); *Am. Year Book, 1910*, 311, *ibid, 1911*, 290, 440, 460, *ibid, 1912*, 268–273, *ibid, 1913*, 288–290.

EMORY R. JOHNSON.

PANAMA CONGRESS. "The General Assembly of the American Republics"—some times (erroneously) called the First Pan American Conference was held at Panama, June 20 to July 15, 1826. The invitation came from Simon Bolívar under date of December 7, 1824. Colombia, the Central American Republic, Peru and Mexico sent delegates. Two Cuban exiles were secretaries. President Adams appointed two delegates but, through half-hearted action by the Senate, they arrived too late. A "Treaty of Union, League and perpetual Confederation" was signed. Had the United States participated, far-reaching influences might have resulted. See LATIN AMERICA; PANAMA; PAN AMERICAN CONGRESSES. References: Alcée Fortier and J. B. Ficklin, *Hist. of North Am.* (1907), ix; F. J. Turner, *Rise of the New West* (1906); J. S. Shaler, *Hist. of the U. S.* (1894); H. H. Bancroft, *Hist. of Central Am.* (1886).

J. B.

PANAMA RAILROAD. The Colombian treaty of 1846 (*see*) looked forward to the immediate construction of a canal on the Panama route, but the only immediate result was the charter of the Panama Railroad, granted in 1850 by New York, in which William H. Aspinwall was the leading figure; hence, the northern terminus, now Colon, was called Aspinwall. The railroad is only 47 miles in length crossing a divide of about 330 feet, but construction through the jungle was so difficult that it lasted from 1850 to 1855, when the road was opened for business at a cost of about $7,000,000. It connected with steamer lines at both ends, that on the west being run by the Pacific Mail Steamship Company. Until the completion of the first overland railroad in 1869, this was the most convenient route from the Atlantic to the Pacific coast of the United States, but it fell under the domination of the transcontinental railroads, which for many years paid the Pacific Mail $500,000 per year to refrain from competition in freights.

The French company bought the railroad, a considerable part of which was on the alignment of the canal; and it passed to the United States in the purchase of 1904 (*see* FRENCH PANAMA CANAL). It thus became the first railroad owned and operated by the Federal Government, which also operates a line of steamers on the eastern side, and connects with the Pacific Mail Steamship lines on the western side.

See CANAL DIPLOMACY; CLAYTON-BULWER TREATY; COLOMBIA, DIPLOMATIC RELATIONS WITH; FRENCH PANAMA CANAL; PANAMA, REPUBLIC OF.

References: W. E. Curtis, *Trade and Transportation between the U. S. and Spanish America* (1889); J. C. Rodriguez, *Panama Canal* (1885).

ALBERT BUSHNELL HART.

PANAMA, REPUBLIC OF. The Republic of Colombia was formed in 1819. In 1829 and 1830, Venezuela and Ecuador withdrew, leaving New Grenada which about 1863 gave itself the name of the United States of Colombia. One of the states in the nominal federal republic was Panama, which included the isthmus of that name. At various times between 1851 and 1902 the United States, acting under the Colombian treaty of 1846 (*see*), landed military forces to protect the isthmus from lawlessness. In 1903, after the rejection by Colombia of the proposed canal treaty (*see* Canal Diplomacy) there was a rising in Panama and an attempt to proclaim an independent state. The Colombian Government sent troops but they were fended off by United States forces which, under orders from Washington, were to prevent any interference with the operation of the Panama railroad. Within a few hours the independent republic of Panama was proclaimed Nov. 3, 1903. Nov. 6, 1903, it was recognized by the United States, followed by European nations. Feb. 23, 1904, a canal treaty was ratified with Panama under which the canal was in due time constructed.

A question with regard to the Panama republic is whether it was founded as a result of an agreement with President Roosevelt at Washington. In a message of Jan. 4, 1904, he specifically denied that he had made any arrangements beforehand; but it is clear that the revolution was expected and that the United States Government was glad to take advantage of it, with regard to the canal.

The Canal Zone (*see*) of the United States bisects the republic.

See CANAL DIPLOMACY; CANAL ZONE; HAY-PAUNCEFOTE TREATIES.

References: T. Roosevelt, *Message of Jan. 4, 1904;* W. F. Jennings, *Four Centuries of the Panama Canal* (1906); P. S. Reinsch, *World Politics* (1900); C. H. Forbes-Lindsay, *Panama, the Isthmus and the Canal* (1906); J. R. Smith, *Organization of Ocean Commerce* (1905); bibliography in A. B. Hart, *Manual* (1908), §§ 86, 196.

ALBERT BUSHNELL HART.

PAN AMERICAN CONGRESSES

Pan American Congresses were the dream of many statesmen at the beginning of the general movement for American independence from European domination. Bolivar had projects for one even before the decisive battle of Ayacucho, Dec. 9, 1824, and he managed to assemble a congress (*see* PANAMA CONGRESS) in 1826. Secretary Blaine projected a conference in a circular letter dated November 29, 1881.

First Pan American Conference.—In 1887, Senator Frye, of Maine, and Congressman McCreary, of Kentucky, introduced bills for a meeting of representatives from the United States and the republics of Mexico, Central and South America, and the Empire of Brazil. The necessary statute passed Congress May 10, 1888. Invitations were then sent out by President Benjamin Harrison and Secretary of State Blaine. The first formal meeting was held in Washington, D. C., October 2, 1889, there being in attendance representatives or delegates from every American government; Brazil was represented by persons designated by the Emperor, although a revolution in that country, by which it became a republic, took place on November 15, 1889. Hence the title of the resulting organization became the International Union of American Republics.

Besides allowing its members to get acquainted with each other by social entertainments and an extensive trip to the larger cities of the United States, the Conference accomplished serious work. Its deliberations were set out in a series of resolutions to be ratified by the legislatures of each nation, which may be epitomized as follows: (1) a definite plan of arbitration was advised, and it was suggested that European nations copy the example; (2) it was to be declared that the right of conquest could not be recognized by American governments; (3) treaties of arbitration were to be negotiated; (4) the survey of a Pan American Railway was to be approved, and a lengthy report on railways was to be prepared; (5) improvements in posts and telegraphs were to be introduced; (6) uniform sanitary regulations were to be established; (7) uniform customs and port regulations, weights and measures, were to be prepared; (8) codes of international law were to be promulgated; (9) extradition treaties for criminals were to be harmonized; (10) by a resolution of March 29, 1890, it was unanimously resolved to found an American International Bureau, first called Commercial Bureau of the American Republics (*see* PAN AMERICAN UNION).

Second International Conference.—The second conference of American states was held in the City of Mexico from October 22, 1901, to January 31, 1902. Delegates from the United States, the 18 Latin American republics (Cuba and Panama were not then organized) attended. Under the rules 19 committees were appointed, and the results of the conference are stated in the following protocol, treaties, conventions, resolutions and recommendations: (1) protocol of adhesion by the American republics to the convention for the pacific settlement of international disputes, signed at the Hague July 29, 1899; (2) treaty of compulsory arbitration; (3) treaty of arbitration of pecuniary claims; (4) resolution favoring the construction of the Pan American Railway; (5) resolution providing for an international customs congress; (6) resolution for the consideration by this congress of means to facilitate American international commerce; (7) resolution on quarantine and international sanitation; (8) resolution for the reorganization of the International Bureau of the American Republics; (9) resolution providing for an international American congress to consider the crisis in the coffee industry; (10) recommendation for the establishment of an international American Archæological Commission; (11) resolution endorsing the construction of an interoceanic canal by the Government of the United States; (12) recommendation for the establishment of an international bank; (13) resolution of greeting to the future Republic of Cuba; (14, 15) formal recommendations and congratulations; (16) treaty for the extradition of criminals and for protection against anarchy; (17) convention for the practice of the learned professions; (18) convention for the formation of codes of public and private international law; (19) convention on literary and artistic copyrights; (20) convention for the exchange of documents and government publications; (21) treaty on patents and trade-marks; (22) convention on the rights of aliens; (23) resolution providing for future international American conferences; (24) numerous votes of thanks to all those individuals and governments instrumental in the success of this conference.

Third International Conference.—A third meeting of the American states was held at Rio de Janeiro, Brazil, July 21 to August 26, 1906. Delegates were in attendance from each of the 21 American republics with the exception of Haiti and Venezuela (Cuba and Panama having meanwhile become independent since the second meeting). Meetings took place in the recently dedicated Monroe Palace, the same as the Brazilian Building erected for the Exposition at St. Louis. During this Conference, Secretary of State Elihu Root was

made an honorary president, together with the Brazilian minister for Foreign Affairs, and after the conference Mr. Root continued his voyage around South America, a trip that aroused great enthusiasm on the part of the republics there, and was the cause of enduring activity in the United States toward closer understanding of their accomplishments and ambitions.

A very important subject for the consideration of the conference was the reorganization and enlargement of the International Bureau of the American Republics; the action of the second conference was not changed but rather reinforced. A resolution was adopted with regard to a permanent building for the use of the Bureau in Washington, to be erected by funds furnished on a pro rata basis by all the American republics, including accommodation for the Columbus Memorial Library already existing. Mr. Andrew Carnegie later made a gift to the International Union of the American Republics of $750,000 for the construction of that building.

The subjects discussed were much the same as those of the second conference in Mexico. As regards arbitration, it must be noted that, through the initiative of the United States and Mexico, all the republics participating in the conference had been for the first time invited to participate in the (coming) Hague Conference; arbitration to settle international disputes was strongly upheld. Conventions were adopted: establishing the status of naturalized citizens who again take up residence in the country of their origin; in regard to pecuniary claims; to patents and trade-marks; on international law. Resolutions were passed concerning: arbitration; the organization of the International Bureau and for its new building; for the creation of special expert divisions in the departments of foreign affairs; also for a section of commerce, customs and statistics; on public debts; on the liberal professions; and on the subjects of sanitary regulations, the Pan American Railway and study of natural resources.

Fourth International Conference.—The fourth meeting of the American states was held in Buenos Ayres, Argentine Republic, July 12 to August 30, 1910. The republics except Bolivia were represented. The number of committees to consider the business of the meeting was increased from seven as in the former conference to 14, as more suitable for the increased activity of the body. These committees are named as follows: (1) rules and regulations; (2) commemoration of the independence of the American republics; (3) reports on action of the governments on resolutions of the third conference; (4) on the report of the director of the International Bureau of the American republics; (5) Pan American Railway; (6) steamship communication; (7) uniformity of consular documents, customs regulations, census and commercial statistics; (8) sanitary police; (9) patents and trade-marks; (10) for the study of a convention on intellectual and literary property, and of a plan to promote interchange of students among universities of American republics; (11) pecuniary claims; (12) future conferences; (13) publications; (14) general welfare. A diagram was prepared showing the action of each government on the conventions of the Rio de Janeiro Conference, showing how far they did or did not become law. A unique action was taken by voting a medal of appreciation to Mr. Carnegie for his gift of the new building of the Pan American Union in Washington, thus representing the gratitude of 160,000,000 people.

It should be understood that none of the conferences has had of itself legislative powers, and that all action in regard to conventions and treaties requires ratification by the governments composing the Union. Its decisions are, however, binding upon the Pan American Union (the new title adopted for its executive office, the director becoming director general, and its secretary, assistant director); the powers of the governing board were also increased. The duties of the Union were materially enlarged.

Other Pan American conferences have been held, such as that for sanitation; for the study of coffee (expired); and on medicine. Congresses with a somewhat similar name (as in Peru, 1848) were not perpetuated nor did they leave any permanent influence.

See BLAINE, J. G.; DRAGO DOCTRINE; MONROE DOCTRINE; PANAMA CONGRESS; Latin American countries by name.

References: Government Printing Office, *Proceedings and Special Reports of the Various Conferences;* A. H. Fried, *Pan Amerika* (1910); Paul S. Reinsch, in *Am. Journal of Int. Law,* October, 1910. JOHN BARRETT.

PAN AMERICAN UNION. The Pan American Union (originally International Bureau of the American Republics), the international organization maintained in Washington by the twenty-one American republics, was created by the First Pan American Conference which met in Washington (1889–1890). Its Governing Board is composed of the Secretary of State of the United States and of the diplomatic representatives in Washington of the other republics; its administrative officers are a director general and an assistant director chosen by this Board. A specially selected staff carries on the work, which is the spread of information encouraging commerce, intercourse, friendship, and peace, between these republics. The Union publishes a monthly *Bulletin,* with editions in English and Spanish. See LATIN AMERICA; PAN AMERICAN CONGRESSES. **Reference:** Pan American Union, *Bulletin,* 1911. J. B.

PANELS FOR JURIES. The panel is the list of names drawn for jury service. The jury commission usually selects the names from which the drawings are made, and from these the sheriff or clerk draws the number ordered by the court to be drawn. Both sides in a case can reject names. If the names drawn should not furnish enough for the jury, a new drawing, or a special *venire* would be made. See JURY, PETIT. Reference: S. E. Baldwin, *Am. Judiciary* (1905), 192. T. N. H.

PANICS. See CRISES, ECONOMIC.

PAPER BLOCKADE. Blockades of ports were proclaimed freely during the Napoleonic wars; and ports were considered by the blockading states as blockaded simply because so proclaimed regardless of the presence of an effective force. Neutral vessels were captured when bound for these ports as by Napoleon's Berlin Decree, of December 17, 1807. Similar methods were resorted to by other nations in subsequent times, and the Declaration of Paris (*see*) of 1856 particularly aimed to put an end to this practice by asserting that "Blockades, in order to be binding must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy." See BERLIN DECREE; BLOCKADE; CONTINENTAL SYSTEM; MILAN DECREE; NEUTRAL TRADE DURING NAPOLEONIC WARS; ORDERS IN COUNCIL.

G. G. W.

PAPER MONEY IN THE UNITED STATES. Although the United States has maintained a monetary standard of gold and silver, paper money since 1789 has been the principal medium of exchange except on the Pacific coast. Such money has been issued in three forms: (1) government bills of credit or treasury notes; (2) certificates of gold coin, of silver coin, and of treasury notes, which have been deposited and held in pledge while the certificates are outstanding; (3) banknotes.

Preconstitutional.—During the colonial period, most of colonies issued bills of credit, and there were a few examples of notes issued against pledged property, as land. These issues in nearly all the colonies were excessive and quickly depreciated. They were defended, however, on the ground that there was a lack of circulating medium, which seriously embarrassed trade. By the middle of the eighteenth century Parliament interfered and placed a prohibition upon further issues.

During the Revolution, the Continental Congress issued $241,553,000 of bills of credit, and the states added $209,525,000 more (*see* CURRENCY, CONTINENTAL). The excessive volume and lack of national credit resulted in a complete collapse in the credit of the notes.

Federal.—Influenced by this disastrous experience, the framers of the Constitution inserted a clause denying the states the right to emit bills of credit. The Constitution is silent, however, as to the right of the Federal Government. After 1789 the country relied for a brief period upon foreign coin, reinforced by domestic coin when the mint began operations in 1793. Banks were quickly established, and by the beginning of the nineteenth century furnished a considerable part of the circulating medium. It is estimated that in 1800, out of a total circulation of $27,000,000, paper money in the form of bank notes contributed $11,000,000, or 40 per cent. At successive dates the proportion of paper money has increased as follows:

Year	Total Circulation (millions)	Paper Money (millions)	Per Cent to Total
1810	$55	$28	51
1820	67	45	67
1830	87	61	70
1840	186	107	57
1850	278	131	46
1860	435	207	48
1870	676	651	96
1880	973	678	70
1890	1,429	945	66
1900	2,055	1,302	63
1910	3,102	2,302	74

In 1862 treasury notes were permanently added to the circulation; in 1878, silver certificates; and in 1865 and 1882, gold certificates were authorized. Of the different kinds of paper money, treasury notes only have the legal tender quality. Gold and silver certificates, however, are receivable for public dues; and national banknotes are receivable for all public dues except customs, and for payments by the government except interest on the public debt or redemption of banknotes; and they are receivable at par for debts between banks.

Per Capita Circulation, 1800–1910.—On selected dates the per capita circulation (outside the Treasury) of paper money, and the total per capita circulation, including coin, were as follows:

Year	Paper Money	Total, Including Coin
1800	$2.93 (banknotes)	$6.22
1820	4.95 (banknotes)	17.18
1840	6.25 (banknotes)	11.11
1860	6.60 (banknotes)	13.85
1865	19.82 (banknotes, treasury notes)	20.57
1880	13.52 (banknotes, treasury notes, and certificates)	19.41
1900	17.06 (banknotes, treasury notes, and certificates)	26.94
1910	24.96 (banknotes, treasury notes, and certificates)	34.33

Kinds of Paper Money, 1861–1878.—The changes which took place in the character of paper money during the Civil War period are seen in the following table (in millions):

Year	State Bank Notes	National Bank Notes	United States Notes	Fractional Currency
1861	$202	----	----	----
1862	184	----	$150	----
1863	239	----	391	$20
1864	179	$31	447	23
1865	143	146	431	25
1866	20	281	401	27
1867	4	299	372	28
1878	----	325	347	17

Use of Certificates.—There are three kinds of certificates—gold, currency and silver certificates. Only since 1900 have gold certificates played any considerable part in the active circulation. Currency certificates were issued between 1872 and 1900, but only in large denominations of $5,000 and $10,000, in order to serve banks in settling balances and in carrying their reserves. More than three-fourths of the silver dollars now circulate in the form of certificates. With the increase in the coinage of silver authorized by the Bland Act (1878) silver certificates soon constituted an important element of the medium, as is seen in the following table concerning the years 1880 to 1910 (in millions):

Year	Gold Certificates	Silver Certificates	Currency Certificates	United States Notes	National Banknotes
1880	$8	$13	$14	$347	$344
1885	140	140	30	347	318
1890	158	301	12	347	186
1895	48	329	55	496	212
1900	228	416	4	423	310
1905	518	465	--	356	406
1910	863	489	--	350	713

Kinds of Paper Money, 1910.—The following table shows the several kinds of paper money outstanding June 30, 1910, by denominations (in thousands):

Denomination	U. S. Notes	Treasury Notes, 1890	Gold Certificates	Silver Certificates	Bank Notes *	Total	Percentage
1	$1,843	$395	------	$140,819	$344	$143,401	5.9
2	1,388	262	------	59,762	164	61,577	2.5
5	114,790	842	------	243,561	135,437	499,058	20.6
10	149,794	1,212	$152,663	26,898	320,975	641,837	26.5
20	20,082	605	233,873	7,721	218,495	474,255	
50	2,308	18	46,139	9,699	16,447	74,197	
100	6,826	209	72,396	603	37,279	116,418	
500	6,417	----	15,387	26	88	21,921	54.
1,000	44,223	128	67,389	27	23	111,790	
5,000	------	----	84,380	------	------	84,380	
10,000	10	----	190,710	------	------	190,720	

* On October 3.

Average Life of Notes.—This varies according to the denominations. The following are estimates made by the Treasury Department:

Denomination	Life in Years
$1.00 silver certificate	1.15
$2.00 silver certificate	1.33
$5.00 national bank note	3.17
$10.00 national bank note	3.02

The average cost of each piece of United States paper currency is 1.571 cents; and the annual cost of maintenance of the currency is about one-fifth of one per cent on the total amount outstanding, or $3,731,000 on $1,702,000,000.

The American nation has paid heavily for its many experiments in the use of paper money. The loss from unsound banknote circulation issued under the old state bank system cannot be estimated in dollars. The direct loss to the government from poor or worthless banknotes received during the four years, 1814–1817, amounted to over $5,000,000; and the suspension of specie payments in 1814 with all its resulting disorders was directly attributable to the inflation of bank circulation. As a consequence of the depreciated currency, the government practically received for loans of over $80,000,000 but $34,000,000 as measured in specie. For a full half-century bank notes were received with caution in the ordinary exchange of business and it became the common custom for merchants to rely upon books of banknote ratings and counterfeit detectors.

To remedy this evil was avowedly one of the reasons which induced Secretary Chase to advocate the establishment of a national banking system, and to favor a tax whereby state banknote circulation might be driven out of use. The issue of paper money during the Civil War seriously affected prices, and in turn, wages. Currency as measured in gold fluctuated from day to day, causing indefinite disturbances. In 1862 the average gold value of one dollar in currency ranged between 98 and 76 cents; in 1863, between 79 and 62 cents; in 1864, between 64 and 39 cents; and in 1865, between 74 and 46 cents. The total effect of paper issues in increasing the cost of the war has been estimated at between $528,000,000 and $600,000,000, but even this is small when compared with the burdens placed upon the people in the ordinary relations of trade and industry. Since the Civil War the support of the credit of the treasury notes has at times placed a heavy strain upon the government. It has required the maintenance of a dead stock of gold as a separate reserve; and for its preservation it was necessary, during the years 1894–1896, to engage in bond operations on disadvantageous terms.

Excessive reliance upon paper money has confused public opinion in regard to the fundamental laws of money, and projected into political campaigns, as seen, for example, in the greenback movement from 1868 to 1876, issues which checked the proper solution of questions of fundamental importance. More than this, it has at times imperiled the keeping of public faith, by the insistence that obligations in times of peace should be paid in promissory notes instead of by loans. While the paper money represented by banknotes may be regarded as secure, it is not an ideal form of money. Its volume does not respond to needs of commerce and trade, but is artifically related to the volume and price of government bonds. The use of paper money in the form of certificates offers no special problem.

See CURRENCY; CURRENCY, FRACTIONAL; GOLD CERTIFICATES; GOLD RESERVE; GREENBACK LABOR PARTY; GREENBACKS; LEGAL TENDER CONTROVERSY; RESUMPTION OF SPECIE PAYMENTS; TREASURY NOTES; SILVER CERTIFICATES.

References: C. F. Bullock, *Essays on the Monetary History of the U. S.* (1900), 29–124, 275 (bibliography); W. C. Mitchell, *Hist. of the Greenbacks* (1903); E. G. Spaulding, *Hist. of Legal Tender Paper Money* (1869); J. J. Knox, *U. S. Notes* (3d ed., 1894); Monetary Commission of the Indianapolis Convention, *Report* (1898), Pt. III on "Demand Obligations;" A. B. Hepburn, *Hist. of Coinage and Currency in the U. S.* (1903); H. White, *Money and Banking* (4th ed., 1911), 79–166; D. R. Dewey, *Financial Hist. of the U. S.* (1903); W. G. Sumner, *American Currency* (1874).

DAVIS R. DEWEY.

PAPERS, PROTECTION OF. See WARRANTS.

PARAGUAY. Paraguay was at first a province, then part of the vice-royalty of Peru, and later (1776) of the vice-royalty of Buenos Ayres. Independence from Spain was declared in 1811. The republic lies between latitude 22° 4′ and 27° 30′ south, and longitude 54° 32′ and 61° 20′ west (Greenwich), comprising an area of 171,815 square miles with a population of 800,000, over 4.6 per square mile. The present constitution (1870) provides for a central government. The legislative branch is a senate and a chamber of deputies. Senators are elected for six years, one for every 12,000 inhabitants, renewed by thirds every two years. Deputies are elected for four years, one for every 6,000 inhabitants, renewed by halves every two years, all by direct popular vote. The executive branch is a president and a vice-president chosen by electors for a four-year term; the Cabinet has five ministers: of the interior; of finance; justice, worship and public instruction; war and marine; foreign affairs. The judicial branch is a superior court of three judges appointed by the president for four years. The republic is divided politically into eighty-four departments each under a *jefe politico* appointed by the president for four years, but for electoral purposes there are 24 districts. The capital is Asunción. State religion is Roman Catholic. **References:** J. I. Rodriguez, *Am. Constitutions* (1905), II, 379–410; Pan American Union, *Bulletin* (monthly).

A. H.

PARCEL POST. Foreign and International. Nearly every country in the world has an international and a domestic parcel post service. The United States has international parcel post agreements with all the European countries except Holland, Spain, Greece, Turkey and Russia. Among the countries most recently brought within the international parcel post service are Brazil and the South African Colonies. China and Japan were included some years since.

The foreign parcel post service is uniform for most countries as regards limit of weight (11 lbs.), limit of value, and postage rates (12 cents per lb.), and the maximum dimensions of packages may be 3 feet 6 inches in length, and 6 feet greatest combined length and girth. In the case of European countries, Japan, Australia and Hong Kong, the limit of value is $80. Packages sent to other countries are not limited as to value.

The use of the international parcel post has increased rapidly. During the year ended June 30, 1905, the weight of mail matter sent abroad from the United States by parcel post was 560,228 pounds; in 1910, the weight was 1,490,718 pounds. The weight of packages received from foreign countries in 1905 was

232,773 pounds; in 1910, 1,446,357 pounds. The growth was unusually rapid in 1908 and 1909.

In an act approved Aug. 24, 1912, Congress authorized the establishment of a domestic parcel post system. Beginning on Jan. 1, 1913, the post office accepted parcels of fourth-class mail matter, not exceeding 11 lb. in weight and not greater in size than 72 in. in length and girth combined. Fourth-class mail matter was defined to include all other matter, including farm and factory products, not now embraced in first, second or third class. The United States was divided into eight zones, and the parcel post rates from any given point were graded from 5 cents for the first pound or fraction and 3 cents for each additional pound or fraction, to 12 cents for the first pound or fraction, and 12 cents for each additional pound or fraction, according to the zone to which the parcels were shipped. The zones were arranged according to their distance from the units of area into which the country was divided, the units of area being 30 minutes square. The first zone included all territory in such a unit of area in conjunction with every contiguous unit of area, representing an area having a mean radial distance of approximately 50 miles from the center of any given unit of area. The second zone included all units of area outside the first zone lying wholly or in part within a radius of approximately 150 miles from the center of a given unit of area. The third zone extended this distance to 300 miles, the fourth to 600, the fifth to 1,000, the sixth to 1,400, the seventh to 1,800, and the eighth included all units of area outside the seventh zone.

The rates on parcels mailed at post offices on rural routes for delivery on such routes, or at post offices with a city carrier system for delivery in such city, were five cents for the first pound or fraction, and one cent for each additional pound or fraction of a pound.

The system proved so successful in the first year of operation that important extensions were inaugurated in August, 1913, and January, 1914.

See EXPRESS SERVICE, REGULATION OF; POST OFFICE DEPARTMENT; POSTAL SYSTEM OF THE UNITED STATES.

References: U. S. Postmaster General, *Annual Reports* (particularly report of the Fourth Assistant Postmaster General); E. R. Johnson, *Ocean and Inland Water Transportation* (1906), chs. vii, viii; E. M. Phelps, *Selected Articles on Parcel Post* (1911); "Hearings before Subcommittee No. 4, Postoffice and Post Roads" in *House Doc.*, 61 Cong., 2 Sess.

EMORY R. JOHNSON.

PARDON, CONSTITUTIONAL PRINCIPLES OF. A pardon is an act of grace relieving an offender against the law from punishment or from further punishment for his crime and from the consequences of his guilt. It may be granted before conviction and thus trial for the offense prevented; or it may be granted after conviction to relieve the convicted person from punishment or from further punishment; or it may be granted after the punishment imposed has been fully suffered with the object of removing any further consequences of guilt by restoring to the convicted person his civil or political rights of which the conviction may have deprived him. But it can not be made effectual to restore offices forfeited or property or interests vested in others in consequence of the conviction. A reprieve is a suspension for a definite or indefinite time of the execution of punishment.

By the usual provisions of state constitutions and the express provision of the Federal Constitution (Art. II, Sec. ii, ¶ 1) the power to grant reprieves and pardons is vested in the executive; but in some state constitutions concurrence of one or both branches of the legislature or of some duly constituted pardoning board is required in some cases. Under the Federal Constitution the power of the President is unlimited and exclusive, the only exception being in cases of impeachment. But Congress may, by legislation, relieve classes of offenders from punishment (*see* AMNESTY).

A pardon may be absolute, limited or conditional. An absolute pardon restores the offender to the condition in which he would have been had the crime not been committed. A limited pardon relieves the offender of some but not all the consequences of guilt. A conditional pardon, if accepted, relieves the offender from punishment or further punishment on his compliance with some condition precedent, such as that he shall leave the state, or with some condition subsequent, such as that he shall report from time to time to the executive, abstain from the use of intoxicating liquors, continue to conduct himself in a law-abiding manner, or comply with other requirements which may be imposed. As pardon is a matter of grace, the acceptance of conditions imposed is binding on the offender and a violation of such conditions abrogates *in toto* the effect of the pardon. Commutation of sentence is in the nature of a conditional pardon.

References: The whole subject of amnesty and pardon is quite fully discussed in the following cases: *Ex parte* Wells (1855), 18 *Howard* 307; Cummings *vs.* Missouri (1866), 4 *Wallace* 277; *Ex parte* Garland (1866), 4 *Wallace* 333; J. R. Tucker, *Constitution of U. S.* (1899), 719; J. H. Finley and J. F. Sanderson, *Am. Executive and Executive Methods* (1908), 83–91.

E. McC.

PARDONS, BOARDS OF. Boards of pardons are provided for in some states by constitutional provision, and in others power is given to the legislature to provide for such boards by law. These boards are made up in various ways, sometimes of regular executive officers in the state, and sometimes of persons selected

for the board. The action of such boards is not final, although the governor usually accepts its recommendation. There are certain limitations on the power to pardon, as for instance that no action be taken by boards of pardon in a case before conviction. See GOVERNOR; PARDON, CONSTITUTIONAL PRINCIPLES OF. References: see State constitutions; J. H. Finley and J. F. Sanderson, *Am. Executive* (1908), 84. T. N. H.

PARISH. The parish in England was an ecclesiastical district, with some added powers of local government. In the colonial period it was a civil district never officially used in New England, but in the South a church community and a body politic. The parish was the ultimate political unit in local government in Virginia and other southern colonies; and in some states it maintained its civil character until the reconstruction period. At present, however, the term is used officially in only one state, Louisiana, where the fifty-nine counties are called parishes; they are, therefore, quite different from the parish as it was known in the colonies and states along the Atlantic.

While the parish of the South never clearly corresponded in functions to the New England township, both divisions finally became subdivisions of the county. Thus vestrymen in New England went over to the town meeting, which was a continuation of other meetings of rate payers known in some English parishes. In the South the other English type of parish government was adopted, the select vestry, a self-perpetuating body or close corporation. These vestrymen, as they were called, for a century and a half in Virginia managed the civil affairs of the parish, including the power to lay taxes for local purposes. Other parish officers included in the governing and administrative group were the rector, the church wardens, the overseers of the poor, the sexton, the clerk, the register and the commissioners of roads.

See COUNTY AND CITY GOVERNMENT; PARISH COUNCIL IN ENGLAND; PARISH VESTRY IN ENGLAND; VILLAGES, INCORPORATED; TOWNS AND TOWNSHIPS.

References: E. Ingle, *Parish Institutions of Maryland* (1883); B. J. Ramage, "Local Government and Free Schools in South Carolina" (1883); E. Channing, "Town and County Government" (1884), all in Johns Hopkins University, *Studies*, I, Nos. vi, xii, II. No. x; W. A. Schaper, "Sectionalism and Representation in South Carolina" in Am. Hist. Assoc., *Annual Report*, I (1900), 326–330.

BENJAMIN F. SHAMBAUGH.

PARISH COUNCIL IN ENGLAND. The parish council is the local civil authority of the English rural parish. Its organization and powers are regulated by the Local Government Act of 1894 (58–57 Victoria, c. 73). There are about 13,000 rural parishes and each has its parish meeting, an assembly of the parochial voters. The parish meeting must be convened at least once a year. If the parish has a population of three hundred or more, the parish meeting elects a parish council of from five to fifteen members who serve for a three-year term. About seven thousand of the rural parishes have councils. The parish council appoints the overseers of the poor and fixes the parish taxes or rates for the support of the poor; it has charge of village greens and other parish lands; it repairs the local highways; maintains the parish library, and in general has inherited the non-ecclesiastical functions which formerly appertained to the old parish vestry. Some other like powers it exercises subject to the direction and control of the parish meeting. See LOCAL GOVERNMENT IN ENGLAND; PARISH; PARISH VESTRY IN ENGLAND. References: W. B. Odgers, *Local Government* (1901), 57–65; J. Redlich and F. W. Hirst, *Local Government in England* (1903), II, chs. iii, iv; *Encyclopædia of Local Government Law* (1905–1908). W. B. M.

PARISH VESTRY IN ENGLAND. The parish vestry is the administrative organ of the ecclesiastical, as distinguished from the civil, parish in England. In its widest sense it is an assembly of the minister, churchwardens and parishioners. The vestry meets at least once a year and its chief work now is that of providing the funds necessary for the support of the parish church and making various provisions concerning other parish property. Its old powers of a non-ecclesiastical nature have passed to another local authority (*see* PARISH COUNCIL). The vestry elects annually the churchwardens, two in number, who are the custodians of the vestry's funds and who keep the accounts. It also chooses the parish clerk and sexton. All parish property, however, stands vested in the minister, whether he be rector or vicar, who is, at law, a corporation sole. See LOCAL GOVERNMENT IN ENGLAND; PARISH; PARISH COUNCIL IN ENGLAND. Reference: W. B. Odgers, *Local Government* (1901), 65–68. W. B. M.

PARKER, ALTON BROOKS. Alton B. Parker (1852–) was born at Cortland, N. Y., May 14, 1852. He was admitted to the bar in 1873, and practiced at Kingston. From 1877 to 1885 he was surrogate of Ulster county. He was a delegate to the Democratic national convention at St. Louis in 1884, and in 1885 was offered by Cleveland the position of first assistant postmaster general, but declined. He was chairman of the Democratic state convention in 1885, and the same year was appointed justice of the state supreme court, being regularly elected the following year. He held this office until 1889, when he was made a member of the court of appeals; in 1893 he passed to

the general term, and in 1896 to the appellate division. In 1898 he became chief justice of the court of appeals, holding his seat until 1904, when he resigned to accept the Democratic nomination for President. In view of the silence of the platform on the question of free coinage of silver, he notified the convention that he regarded the gold standard "as firmly and irrevocably established," and that he could accept the nomination only on that understanding. The Democratic popular vote fell off heavily, and he received only 140 electoral votes against 336 for Theodore Roosevelt. Since 1904 he has practiced law in New York City. See SILVER COINAGE CONTROVERSY. Reference: J. R. Grady, *Lives and Public Services of Parker and Davis* (1904). W. MACD.

PARKHURST, CHARLES HENRY. Charles H. Parkhurst (1842–) was born at Framingham, Massachusetts, April 17, 1842. After several years of teaching, and of study in this country and in Europe, he entered the ministry, and in 1874 became pastor of the First Congregational Church at Lenox, Massachusetts. In 1880 he was called to the pastorate of the Madison Square Presbyterian Church, New York City, which pulpit he still fills (1913). He took an active interest in municipal affairs, became a director of the Society for the Prevention of Crime in 1890, and in 1891 its president. For a sermon preached in February, 1892, in which he charged the police and certain city officials and departments with protecting and aiding crime and vice, he was summoned before the grand jury, which pronounced the allegations false. He then undertook a systematic investigation of the criminal life of the city, and in March repeated his charges, which this time were investigated by the grand jury, and led, in 1894, to the Lexow investigation by a committee of the state legislature. He also organized a City Vigilance League for the promotion of good citizenship among young men. A brilliant speaker, he was betrayed in later years into extravagances of assertion which weakened his influence, and hindered the reforms which he had at heart. See SOCIAL REFORM. References: C. H. Parkhurst, *Our Fight with Tammany* (1895); *Appleton's Annual Cyclopædia* (1893–1896). W. MACD.

PARKS AND BOULEVARDS

Definition.—Loosely the word park is used in connection with public affairs to designate any open space devoted mainly to public enjoyment. In such terms as "park system," "park department" and "park appropriations" it is applied in practice to almost any property or public activity in any way associated with outdoor recreation or with the adornment of a municipality.

More narrowly, as distinguished from boulevards and from other elements of a park system, such as squares, gardens, commons, playgrounds, etc., the word park is applied to a fairly extensive tract of land, set apart primarily for the enjoyment of its landscape by the public, and normally possessing qualities more or less suggestive of the English deer parks from which the term was borrowed.

A park system is a series of grounds more or less completely and systematically meeting all the requirements of the public for outdoor recreation and associated functions throughout a considerable district.

Historical Development of Municipal Parks and Their Functions.—Parks as regular municipal undertakings date from the middle of the nineteenth century. Before this time townsfolk had used for their recreation the disappearing remnants of ancient commons and other vacant lands, and also sporadic ornamental gardens, squares, etc. The latter had in part been created for individuals or institutions and become opened to the public on sufferance, in part had been laid out by speculative landowners to increase the value of adjacent lots, in part had originated as spasmodic public undertakings. The continued and gradually more systematic provision of such minor ornamental grounds and of common fields for the rougher activities, has been taken over by municipalities as an incident of the modern park movement; but that movement really arose out of a wholly new conception.

It was felt that closely herded people in the oppressively large and interminably growing towns of the new industrial epoch needed the refreshment of rural scenery, which was rapidly becoming inaccessible to them. The model was the private parks attached to gentlemen's seats which were scattered over the whole of England, and were characterized by a beautiful type of spacious pastoral scenery, with much open greensward enframed in spreading trees. Land for Battersea Park, the first public park of this type in London, was acquired in 1853.

The spaciousness and quiet breadth sought in these parks, are obtainable in a city only where a large body of land is devoted strictly to the purpose; they seriously interrupt the street system of a city and are far less generally accessible than more numerous and scattered smaller tracts.

In America notable early examples of large parks were: Bushnell Park, Hartford (1853); Central Park, New York (1856); Fairmount

Park, Philadelphia (1857); Druid Hill Park, Baltimore (1860); Prospect Park, Brooklyn (1866–67). Among those who in this period most influenced the development of large rural parks in America by their writings and by the design of parks were Andrew Jackson Downing, Horace Bushnell, Frederick Law Olmsted, Calvert Vaux, Robert Morris Copeland and H. W. S. Cleveland.

Another step was to connect the parks with each other and with centers of population by a system of boulevards (*see*). Paris under the second empire set the example, followed sporadically in America in the sixties and seventies, notably in Chicago. Informal parkways, or narrow, elongated parks were developed as connections in the Boston system designed by F. L. Olmsted (1877–86). The idea was joined with that of systematically acquiring large "reservations" of scenery in the more distant suburbs of a large metropolis, urged by Charles Eliot in his report on a metropolitan park system for Boston in 1892, a project largely executed in the following decade. Notable recent systems of extensive boulevards are those of Kansas City and Oklahoma City.

Functionalized Pleasure Grounds.—Alongside the provision of agreeable scenery, American parks have generally been used, in part for field sports, and for other purposes. But to retain the refreshing beauty of a park it is necessary to curtail such privileges as the amount of use increases, and to concentrate the hardest wear and tear upon areas prepared especially to withstand it, the roads, walks and so forth.

This curtailment coincides with a sharp increasing demand for outdoor activities, hence a systematic specialization of function in public recreation grounds. The land on which the concentrated athletic contests of a city take place must become a bare sanded plain—an arena, not a rational part of a park. It is nearly as valuable for its prime purpose if isolated from the park scenery as if in the midst of it.

The arena represents a whole category of desirable things which it is extravagantly wasteful to inject into the landscape of such a park. Park departments have provided for some of these, such as for rough play, athletics and bathing, both out of doors and under shelter; for horse racing; for dancing and other social entertainments; and for various educational activities merging with those of schools, libraries, and museums (*see* EDUCATION AS A FUNCTION OF GOVERNMENT).

Provision for such diverse functions, whether under the jurisdiction of a park department or of some other agency, is often conveniently made adjacent to land set apart primarily for the enjoyment of scenery, and sometimes it is expedient to transfer land from one kind of public use to another. But a fatal mistake is made when the equipment for such a special use is introduced into a park landscape to which it is foreign.

Modern Recreation Grounds.—An important step in recognition of this principle was the formation, adjacent to an area of congested population, of the ten acre neighborhood park known as Charlesbank, in Boston, 1887, provided with outdoor gymnasia and running tracks for men and for women, with field houses containing washing facilities and lockers, with a playground for very small children, and with a riverside promenade and a good deal of pleasant scenery. The most notable development in this line is the series of local recreation grounds created by the South Park Commission of Chicago beginning with McKinley Park in 1903. Many of these include both indoor and outdoor gymnasia, swimming pools and other baths, branch libraries, rooms for dances, lectures, and meetings, lunch rooms, open arenas for rough play and separate playgrounds for little children, as well as a modicum of attractive resting grounds, open air concert places and other provisions for the passive recreations of the less strenuous.

Ideals of a Park System.—An ideal modern park system will include a series of local recreation grounds, associated as closely as practicable with the educational equipment of the city, containing specialized and effective provision for many kinds of public recreation; specifically, provision suitable to every age, for physical exercise and for such gregarious and social pleasures and activities as band concerts, dances, public meetings, etc., together with opportunity for resting out of doors and for the enjoyment of outdoor surroundings as pleasant and spacious as it is practicable to provide within easy walking distance of every home in the city. Such parks will vary from very small plats of ground serving solely as decorations, to tracts large enough to provide for a wide variety of functions. Economy of land and of operating cost is favored by large units. The need for accessibility on foot by women and children limits the district effectively served by any unit to not more than a half-mile radius, thus tending to limit the size of each unit. The size most generally profitable appears to be from 10 to 50 acres, and the proportion of total city area occupied by all of such grounds should be apparently from five to ten per cent.

There should be accessible by convenient means of transportation to substantially the whole population, one or more parks of such extent and topographical character and so improved as to provide spacious, beautiful, rural scenery, together with such other features as are compatible with the fullest possible enjoyment of that scenery by the people. There should also be boulevards or parkways forming exceptionally agreeable means of passage, especially to and from the parks, and incidentally serving in places some of the purposes of

local recreation grounds or even of large parks, especially in those cases where they are laid out on the shores of a large body of water.

Authority in Control.—The park administration in most American cities is directed by one of several bodies: (1) a single bureau chief, generally called superintendent of parks, who is usually responsible through a director of public works to the mayor, and closely limited in authority by the city council or other appropriating body; (2) more commonly a park commission, consisting of three, five, or occasionally more members, often occupying a position somewhat independent of other city departments. Park commissions are generally unpaid, employing a paid superintendent or other executive officer. The terms of commissioners are most often three years, and usually arranged to expire in rotation so as to prevent sudden changes of personnel. They are generally appointed by the mayor, sometimes by the governor or by the courts; sometimes they are elective. Rarely they are self-perpetuating like the trustees of an endowed institution.

The general preference for a commission as tending to afford greater continuity and wisdom in choice of aims, has a logical ground in two peculiarities of park work. (1) The full return from a park investment is seldom obtained until many years after the first expenditures, and then only as a result of following a consistent policy in apparently trifling questions which have an enormous cumulative effect with the lapse of years. (2) Since park values cannot be exactly measured on an economic or scientific scale it is difficult to define the purposes which have controlled the decisions and expenditures under one administration so clearly that a succeeding and independent administration will fully understand and continue to pursue the same remote objective.

Experts.—The park authority, whether a single officer or a commission, in directing the policy of the department normally acts upon the advice of experts having special technical knowledge and skill in special fields. The regular staff usually includes men of technical training in civil engineering and in horticulture and arboriculture, sometimes a landscape architect with a broad technical training in park design. More frequently experts in landscape architecture, in architecture, and in special classes of engineering are employed in a consulting capacity or for special problems. As a check on the artistic and technical policy of the commissioners the New York City charter includes a peculiar provision giving the official landscape architect veto power over any plan for new work or alterations which he does not approve. Since 1909, New York has also provided for a Supervisor of Municipal Concerts in the parks and recreation piers.

A commission is expected to secure administrative efficiency through employing a responsible single executive; but in practice this theory breaks down with lamentable frequency. Members of a park commission are apt to distribute among themselves a lot of executive detail in such a manner as to weaken and confuse the responsibility of their employees for producing good results; to become absorbed in attending to this detailed work, which a multiple board is ill fitted to perform; and in so doing to lose sight of their real function which is to watch the larger tendencies of the work done by their employees.

Power over Land.—A park commission normally has three powers. (1) To acquire land in the name of the municipality for park purposes, by purchase, gift, devise or condemnation. Within the limit of available funds its discretion in selecting land is normally complete and independent. Power to acquire land outside of the city or district to which the Commission is attached is not unusual. A general power to alienate or abandon land acquired for park purposes is possessed, in some cases, normally by concurrent action with the city council or some other body. The power of abandonment is often of great value in rectifying boundaries. (2) To improve, maintain and operate parks, and associated facilities for public recreation, and to undertake any work incidental to that end either through its own employees or through contractors, concessionaires or lessees. A very wide range of activities is here included, from the ordinary work of park construction, planting and maintenance, to the operation of restaurants, dance halls, bathing suit factories, emergency hospitals and other facilities contributory to the use of the land by the public for park purposes. On the question of what is not a park purpose, and therefore beyond the power of park authorities to do or permit, no clear decision has been rendered by the courts. The temptation to regard parks as so much vacant public building land is very great. There is hardly any conceivable purpose, public or private, for which it has not been seriously and urgently proposed to use some part of Central Park, New York, for example. Generally, both in New York and elsewhere, a strong public opinion has withstood the more glaringly unparklike uses, such as for court houses, hospitals and schools; but there have been instances of the erection of all of these in parks; museums have been more often admitted; zoological and botanical collections have a sufficient element of outdoor recreation to be frequently admitted and occasionally to be operated by park authorities. But even the art museums are seldom if ever operated by the park authorities, and the legal status of the land they occupy is probably that of property withdrawn from park use and transferred to other uses, with or without the sanction of law. (3) To make rules governing the use of parks, to fix penalties for their infringement, to make

arrests, and to prosecute violations of the rules. Frequently authority to enforce park rules is exercised by an independent police force instead of by watchmen responsible to the park authorities; but never with entirely satisfactory results because the work to be done is connected with park maintenance rather than with ordinary police work.

Where the park authority is a single executive his powers are more closely limited than those normal to a commission, especially in the acquirement of land, which is generally done (theoretically on his recommendation) by some other branch of the city government.

Finances.—Funds for the purchase of park lands are generally obtained by the issue of bonds. Funds for "permanent improvements" are frequently so obtained. Special authorization is required to issue bonds, whether the park authority otherwise has large independent discretion or not. This authorization is granted variously by the legislature, by the city council, or frequently by popular vote. Funds for paying interest and redeeming bonds are raised partly by annual tax levy and partly by special assessments based on special benefit, the latter more particularly in case of land purchases. This practice is much more general in the Mississippi Valley and westward than in the Atlantic states. In Kansas City practically the whole initial cost of parks is borne by special assessment, short term negotiable "park certificates" being issued in place of bonds.

Maintenance and operating expenses are usually met out of an annual tax levy. Appropriations directly payable out of the annual tax levy (or out of the general funds) are made annually, in the case of most single park executives and of many park commissions, by the city council or other general appropriating body. Many other park commissions command an income not dependent from year to year on any other appropriating body, generally through the permanent assignment to them of taxes up to a certain number of mills per dollar of assessed valuation. The maximum rate is fixed by act of legislature and remains unchanged for long periods. It varies from 1/2 mill to 2 mills and is more commonly 1 mill. In Baltimore the park commission has an independent and fairly regular income through having assigned to it by act of legislature the proceeds of a tax on the gross earnings of the street railways of the city, beginning with a tax of 25 per cent and now standing at 9 per cent.

State Parks.—Occasional reservations of land are held by states for public use, on account of scenic or historic interest, generally at such distance from urban centers as to make municipal control inexpedient. They are normally administered by a special commission under appropriations made by the legislature out of the general funds of the state.

National Parks.—Thirteen tracts of large extent have been reserved by the national government for purposes variously and loosely indicated in the acts but generally understood as the preservation of their natural features for the enjoyment of the public. The earliest and largest was Yellowstone Park (1872), 2,142,720 acres; the latest is Glacier Park, Montana (1910), of 981,681 acres; the smallest is Casa Grande Ruins, Arizona (1889), 480 acres. The Yosemite Park, California, was a state reservation ceded, 1890, to the national government. Some of them are largely visited by tourists, others are as yet too remote for enjoyment by other than campers. They are administered by the Department of the Interior through local superintendents, by methods as various as the acts creating the parks, with the assistance of military patrols assigned to this service by the War Department.

Associated with the national parks are the so-called national monuments, established under act of Congress of June 8, 1906, for the preservation of objects of historic or scientific interest on public lands, administered by the Departments of the Interior and of Agriculture. They were twenty-five in number in 1910, varying from plots of 10 acres to the Grand Canyon of 806,400 acres.

See Boulevard; City Planning; Common Lands; Conservation; Forest Service; Irrigation and Irrigated Lands; Monuments, Public; Playgrounds; Public Lands, Reservation of; Public Works, National, State and Municipal; Real Estate, Public Ownership of; Roads; Streets.

References: A. W. Crawford and F. M. Day, *Am. Park Systems* (1905); W. E. Curtis, "*Our National Parks and Reservations*" in Am. Acad. of Pol. and Soc. Sci., *Annual*, XXXV (1910), 2; John Muir, *Our National Parks* (1901); F. L. Olmsted, "Public Parks and the Enlargement of Towns," reprinted from Am. Soc. Sci. Assoc., *Proceedings* (1870–1873); U. S. Sec'y. of Interior, *Annual Report*, 1910, appendix K; periodicals and reports, esp. *Garden and Forest* (1888–1897); *Landscape Architecture* (1910–); Am. Park and Outdoor Art. Assoc., *Proceedings* (1897–1903); park reports of the following cities, dates indicating annual reports of notable value: Boston, 1879, 1880, 1885, *Boston City Docs. 1880*, No. 125; Brooklyn, 1867, 1873; special report accompanying plan of Prospect Park, 1866; Buffalo, 1871, 1886, 1888; Chicago, South Park Commission, Metropolitan Park Commission of Mass., 1893; New York, 1857–68, special report accompanying plan of Central Park, 1868; Washington, D. C. in *Sen. Docs.*, 57 Cong., 1 Sess., No. 166 (1902).

Frederick Law Olmsted.

PARLIAMENT. Membership.—Parliament has consisted of two Houses—Lords and Commons—since 1295 when the representation of the people became continuous. At no time has

there been a statute determining the number of the members of the House of Lords. In 1832 a statute was enacted fixing the number of members of the Commons other than those from Scotland and Ireland; and it was in 1832, also, that a law was passed determining the qualifications of electors in all constituencies. On March 12, 1913, the number of members of the House of Lords was 650, of which 57 had been created after the Liberals came into power in December, 1908. At the passage of the Reform Act in 1832, the number was 386, not including the Lords spiritual—the archbishops and bishops of the established churches of England and Ireland. In 1913 of the 650 peers 574 were hereditary peers of the United Kingdom; 6 were life peers—lawyers added to strengthen the House of Lords as a court of appeal; 26 were bishops; 16 were Scotch representative peers and 28 were Irish representative peers. There is no statutory obligation on the part of a peer to attend; and the normal attendance when there is business of any importance is sixty or seventy.

Since the Redistribution of Seats Act of 1885 the House of Commons has consisted of 670 members. England returns 465, Wales 30, Scotland 72, and Ireland 103. In the early days of the representative system wages were paid to members of the House of Commons. They were a charge on the constituencies. Just as soon, however, as seats became in demand—as lawyers and courtiers were eager to be of the House and willing to serve without pay, wages and travelling expenses of members gradually ceased to be paid, and only in a few isolated cases were they a charge on the electors after the end of the sixteenth century. Payment of wages was revived in 1911. Members of the House of Commons now receive £400 a year—not as of old from their constituents, but from the imperial treasury. A man who is of the House cannot end his connection with it during the life-time of a Parliament except by accepting an office of profit under the Crown, an office that is a statutory disqualification. Hence the bestowal of the Stewardship of the Chiltern Hundreds is the method of honorably terminating a member's connection with the House.

Officers.—The lord chancellor, who is of the Cabinet, by virtue of his office, is the presiding officer of the House of Lords. The speaker of the Commons is elected at the beginning of a new Parliament. The permanent officers of Parliament are the clerk of Parliaments whose duties are in the House of Lords and the clerk of the House of Commons. Both are appointed by the Crown.

Election.—The dissolution of Parliament and the calling of a new one are effected by the same royal proclamation issued by the king on the advice of the Privy Council under the Great Seal. By this proclamation the existing Parliament is discharged from its duties of attendance, and the Crown declares its desire to have the advice of its people, and its will and pleasure to call a new Parliament. By virtue of this proclamation writs are issued from the crown office for the new Parliament. They are returnable in thirty-five days; and are addressed, in so far as they concern the membership of the two Houses: (1) to the temporal peers of England; (2) to the spiritual peers of England; (3) to the 28 temporal peers of Ireland; and (4) to the returning officers—high sheriffs and mayors—in the borough and county constituencies of England, and Wales, Scotland and Ireland. There is no writ of summons for the Scotch representative peers. Their election at Holyrood Palace, Edinburgh, by the peers of Scotland, is made by virtue of a separate proclamation.

Meeting.—Parliament meets on the day named in the proclamation. In the Lords, peers who have received writs of summons present them at the table where the roll of men entitled as hereditary peers of England to receive writs is delivered by the Garter King at Arms. This official also delivers a list of the Lords spiritual; and the title of the representative peers of Scotland is evidenced by a certificate delivered by the clerk of the Crown of a return made by the lord clerk register of Scotland. In the Commons at the assembling of a new Parliament the clerk of the house receives from the clerk of the Crown, from whose office the writs were issued, a book containing a list of the returns made to the writs. In both houses every member takes the oath of allegiance, or makes an affirmation on stating either that he has no religious belief or that it is contrary to his religious belief to take an oath. A new Parliament is opened by commission. The first business of the Commons is the choice of speaker, who is not only first commoner and chairman of the House but also its spokesman to the Crown. Next comes the speech from the throne announcing the objects of the summons of Parliament, a speech prepared by the Cabinet, in which are mentioned the more important measures to be submitted during the session. To hear this members of the Commons attend at the bar of the House of Lords. Each house proceeds to a consideration of the speech on a motion for an address in reply to the speech—a motion made and seconded in both houses by non-official supporters of the government. Amendments to the address are in order; and there have been occasions—as in 1886—when a government that had not secured a majority in the elections was defeated in the Commons and went out of office. Usually before the address to the Crown is adopted, the general policies of the government have been debated during several sittings of the House. There is a speech from the throne at the opening of every session; also a king's speech at the end of the session, in which the acts passed are recapitulated,

Each house has power of adjournment. Prorogation is by the exercise of the royal prerogative. It ends the session of both houses simultaneously and terminates all unfinished business.

Law-Making.—Law can only be made by an assembled Parliament and by the concurrence of Crown, Lords and Commons. Money bills must originate in the House of Commons. The Lords lost the power to amend these bills in the reign of Charles II, and by the Parliament Act of 1911 they were deprived of the power —only once used in three centuries—of rejecting a money bill. Until 1911 the relations of the two houses were determined only by standing orders and usage. The Parliament Act greatly restricted the veto power of the Lords and also fixed five years as the maximum lifetime of a Parliament.

See CABINET GOVERNMENT; HOUSE OF COMMONS; LEGISLATION, BRITISH SYSTEM; PARLIAMENT, PROROGATION AND DISSOLUTION OF; PARTY GOVERNMENT IN GREAT BRITAIN; PRIME MINISTER.

References: W. Anson, *Law and Custom of the Constitution* (3d ed., 1907), I; C. Illbert, *Parliament: Its History, Constitution and Practice* (1911), 32–119; A. L. Lowell, *Government of England* (1908), I, Pt. I; S. Low, *Governance of England* (1904), chs. i-vi.

EDWARD PORRITT.

PARLIAMENT, CANADIAN. The Canadian Parliament, in its present form, is of recent origin, for its existence began in 1867 (*see* CANADA, DOMINION OF). The framers of the constitution of Canada were imbued with the methods and traditions of the British Parliament; it thus happened that while they framed a federal constitution they yet declared that it was "similar in principle to that of the United Kingdom." Canada, like Great Britain, has in reality no written constitution. The British North American Act, which created the Canadian Parliament, gives a mere outline of a political system rather than a formal constitution. The details are filled in by the law and the customs of the constitution which have grown up in England. The result is that the Parliament of Canada is more closely akin to the Parliament of Great Britain than to the Congress of the United States. The executive government is responsible to and controlled by Parliament, and Parliament itself has absolute authority. It can confiscate property and even sentence to death by bill of attainder. In order to make the central government strong the Act reserves to it all the powers not specifically delegated to the provinces.

A measure which becomes law in Canada must receive the assent of the king given by his representative, the governor-general, after it has been adopted by the two Houses of Parliament, the Senate and the House of Commons. This method appears similar to that in the Congress of the United States of assent by the President after passing the two houses of Congress. In reality the part played by each of these three factors in legislation is different in the two countries.

(1) The head of the state in Canada, the king, represented by the governor-general, has no power at all approaching that of the President of the United States. Like the President, he is the chief figure in social functions. But, unlike the President, he takes no part in the executive government and, in Canada, though not in Australia, is absent from the meetings of the Cabinet. He has no veto power, for he must give his approval to the measures, lying within the jurisdiction of the Canadian Parliament, which are submitted to him.

(2) The Senate of Canada consists of 87 members. As vacancies occur members are appointed for life by the government of the day. The senators are grouped in four divisions: 24 from Ontario, 24 from Quebec, 24 from the Maritime provinces, and 15 from the Western provinces, a number likely to be increased in the near future. The federal principle under which all the states of the Union have equal representation and authority in the Senate was, no doubt, in the minds of the framers of the Canadian constitution, but has had only a vague and uncertain application. In the United States the Senate is as strong as the House of Representatives. Perhaps it is an even stronger body. In Canada, on the other hand, the Senate occupies a position of subordination to the House of Commons. As the members sit for life they have no direct mandate from the people and exercise little influence in the country. This comparative inferiority can be accounted for largely by the fact that the House of Commons, a really representative body, controls the government under the principles of ministerial responsibility (*see* RESPONSIBLE GOVERNMENT IN CANADA).

(3) The House of Commons in Canada not only discharges the functions of a legislative body but it also controls the executive administration. No government can remain in power which is not supported by a majority in the House of Commons. Thus the real ruler is the leader—the prime minister—who commands this majority. He selects the Cabinet and discharges in the Canadian political system the functions discharged by the President in the United States, with the difference that not he, but the governor-general, as representing the king, is the nominal head of the state.

The Executive Government.—The executive government is controlled by Parliament and each member of the Canadian Cabinet must have a seat in Parliament. The nature of the Cabinet itself, in Canada, as in England, is not defined anywhere in the constitution. It is, in theory, merely an informal executive committee named by its chairman, the prime minister. The members are pledged to divulge

nothing that takes place in the Cabinet and no record of its deliberations is kept. Any important measures which pass the Commons must first be approved by the Cabinet. This applies especially to money bills which can be proposed only by the government of the day.

The Party System.—Though the nominal term for a Parliament is five years, an appeal to the people may be made at any time, as need arises. Thus, in contrast with the American system, elections take place in Canada at irregular intervals; a Parliament may endure for five years or for less than a year. There must not be an interval of more than twelve months between its meetings. Canada has two great political parties, the Conservative party and the Liberal party. Each party has always at its head a recognized leader. Since, to remain in office, a party must have a steady majority in the House of Commons, party discipline is strict. A member of a party refusing to give his leader, the prime minister, steady support would be denied control over patronage and other favors which a government has at its disposal.

Though the speaker in each of the two houses of the Canadian Parliament is always the nominee of the party in power, he is expected to discharge his functions impartially and to take no part in the warfare of party. By law the Canadian Parliament is bilingual; members have the right to speak either in English or in French, and the more important state papers are printed in both languages. The Province of Quebec, which is prevailingly French, has been made the pivot of the Canadian parliamentary system. It has the right in perpetuity to send sixty-five members to Parliament and the representation of the other provinces is adjusted on the basis thus reached in Quebec. The census is taken every ten years and is followed by a redistribution of seats.

See CANADA, DOMINION OF; CANADIAN PROVINCES; RESPONSIBLE GOVERNMENT IN CANADA; also provinces by name.

References: W. Houston, *Documents Illustrative of the Canadian Constitution* (1891); H. E. Egerton, *Federations and Unions in the British Empire* (1911); W. H. P. Clement, *Law of the Canadian Constitution* (1904); A. Todd, *Parliamentary Government in the British Colonies* (1880); A. H. F. Lefroy, *The Law of Legislative Power in Canada* (1897–8).

GEORGE M. WRONG.

PARLIAMENT, PROROGATION AND DISSOLUTION OF. Prorogation and dissolution of Parliament are by the exercise of the royal prerogative. Adjournment of either house lies within its own power. A new Parliament is convened by the Crown and is opened by a speech from the throne outlining the business of the session. In an ordinary session of the House of Commons there are usually two adjournments—for the recesses at Easter and at Whitsuntide. In case the session is prolonged into the autumn there is a third recess usually of a little over two months. The adjournments are by motion made generally by the leader of the house from the treasury bench, and on these motions almost any question can be discussed except when there are blocking notices on the order paper intended to prevent the debating of some particular subject. In the House of Lords adjournments are more frequent, especially in the earlier part of the session when as yet few bills have gone forward from the Commons. When both houses stand adjourned for more than fourteen days, it is within the statutory power of the Crown to summon them to reassemble. This power, brought into service only at great crises, and exercised by the sovereign on the advice of the Cabinet, is wielded by proclamation commanding the meeting of the houses. The Crown cannot make either house adjourn, though it may signify that it is its pleasure that they should adjourn. Prorogation ends a session. Like the convening of Parliament it is the occasion of a speech from the throne—in this case reviewing the work of the session. A dissolution of Parliament is preceded by a prorogation, except when a Parliament ends by efflux of time. Dissolution following prorogation is by proclamation issued by the king, on the advice of the Privy Council, and this proclamation made in the House of Lords is treated by the crown Office in Chancery as the authority for the issue of writs for a new Parliament. In the Dominion of Canada, Australia, New Zealand and South Africa, and also in crown colonies with representative assemblies, the usage in regard to prorogation and dissolution is in most details the same as at Westminster.

See ADJOURNMENT; HOUSE OF COMMONS; PARLIAMENT. **References:** W. R. Anson, *Law and Custom of the Constitution* (4th ed., 1909), chs. iii, vi, vii; T. E. May, *Parliamentary Practice* (11th ed., 1906), ch. ii.

E. P.

PARLIAMENTARY LAW

Definition.—A system of common rules and practices for the government of deliberative assemblies is known as parliamentary law. To this same body of rules and practices the name rules of order is also applied. The rules included are the ones that are employed in assemblies generally. In individual assemblies there are often special rules which are known as standing rules. These arise as motions in the assembly and are adopted just as any other motions or resolutions are. The record of standing rules is found in the written minutes

of the organization; the rules of order are usually those contained in some manual of parliamentary law. The constitution and by-laws are the supreme regulations within the limits of which an organization does its work. In ordinary assemblies where a written constitution and by-laws exist, the latter usually names some particular manual of parliamentary law for the regulation of the deliberative and legislative actions of the assembly.

Origin.—The term parliamentary originated from the English Parliament, the first assembly in history to formulate a complete system of procedure such as has come down to our times. It must not be understood, however, that the usages of the Parliament of England constitute the ultimate authority in parliamentary practice, either in England or America, nor do the practices of the Congress of the United States necessarily obtain in assemblies generally in this country. Many of the rules that govern these assemblies are not now well adapted to the government of common assemblies. In so far as there is an ultimate authority for parliamentary law, it will be found in the practices common to deliberative assemblies generally. General usage is the ultimate authority. This usage had its genesis in the English Parliament, but it is now the product of the slow evolution of centuries. It has been added to now and then by legal-minded philosophers, and "infiltrated with the common sense of the many," so that, while even yet it is not a perfect system, it is well adapted to the needs of ordinary deliberative bodies. Of the many writers on parliamentary law in America, it should not be forgotten that Thomas Jefferson is perhaps the one to whom greatest credit is due. He is the pioneer American parliamentarian, and Jefferson's *Manual* is still embodied in the *Rules and Practices of the House of Representatives.*

Main Principles.—While parliamentary law may vary in the details of its rules, underlying it all there are four invariable foundation principles or corner stones, upon which every portion of the superstructure rests. They are: (1) justice and courtesy to all; (2) one thing at a time; (3) the rule of the majority; (4) the rights of the minority. "The great purpose of all rules and forms," says Cushing in his *Manual of Parliamentary Practice*, "is to subserve the will of the assembly rather than to restrain it; to facilitate, and not to obstruct, the expression of their deliberate sense." The will of the assembly is the will of the majority. In parliamentary law this principle of majority rule is central. But it is to be observed that it is the deliberate will that is sought, and to this end parliamentary rules are so framed as to antagonize the spirit of mob-mind and the creation of a "crowd." The rules favor control by reason rather than by suggestion.

Assemblies and Their Organization.—When a number of people come together to accomplish a purpose in a way requiring the employment of some parliamentary rules, their organization usually assumes one of three forms. If the group have come together in consequence of some public summons, for a single purpose, and contemplating only a single meeting, the assembly is known as a simple assembly or mass meeting. In perfecting an organization the usual steps are: (1) the calling of the meeting to order by any interested member; (2) nomination, election, and inauguration of a chairman and a secretary; (3) the statement of the object of the meeting by the chairman or some one selected by the chairman; (4) transaction of the business provided for in the "call" followed by adjournment. A second kind of organization is one known as a permanent society, which is instituted for one or more purposes, and is to continue indefinitely. The procedure in such an organization is at first like that in a mass meeting, followed by the election of permanent officers and perhaps the adoption of a constitution, by-laws, and rules of order. The third sort of assembly is a kind called a representative assembly, one whose members are chosen as delegates from other bodies. Such assemblies as these usually have a prescribed method of procedure, as is the case in state legislatures and political conventions.

The chief officer of an assembly is variously called president, chairman, speaker, moderator, etc. He is the director of the business of the assembly, the leader of its activities. A good chairman never becomes excited, angry, or partisan. He knows the rules of the assembly and applies them tactfully, skillfully, and faithfully. He may adjourn an intolerably turbulent assembly, and may himself be recalled from his office if he proves unfaithful to duty. Other officers are: a vice-president, to act in the absence of the president; a secretary, to keep the records of the organization; a treasurer, to take care of the funds; and still other officers, depending on the nature of the organization. The members of an assembly have all their rights resting on the equality of members. It is incumbent on members to seek to have all business transacted in accordance with the rules of the assembly.

Business, Debate, Voting.—In order to introduce business, a member must first obtain the floor. This he does by rising and addressing the chairman by his official title, and then receiving recognition from the chairman. Business is usually introduced by the making of a motion, that is, a formal proposition offered for the consideration of an assembly. Such a motion must be seconded by another member, who does not need to obtain the floor, merely saying, "I second the motion." This motion must now be stated by the chairman, after which it is deemed in the possession of the assembly. Motions of this sort are open to debate. Members in turn obtain the floor and confine their

remarks strictly to the merits of the specific question before the house. The discussion of motives and personalities is not permissible. Ordinarily a member may not speak beyond ten minutes, nor more than twice on the same question and the second time only after others who wish to speak have spoken once.

Voting is a means of determining the judgment of the assembly on a proposition. It may take the form of a ballot, in which the members write their decisions on slips of paper distributed and collected by tellers. The form of voting most frequently employed is by ayes and nays, the chairman putting the question, "Those in favor of the question say 'Aye.'" After a pause for the affirmative vote he then says, "Those opposed say 'No.'" The volume of voices, if fairly representative of the number of voices, is the basis of the chairman's decision, "The question is carried (or lost)." A division may be called for, when those in favor of the motion stand and are counted and then those in favor of the negative. When voting by yeas and nays is the form employed, the chairman says, "As many as are in favor of the question will, when their names are called, say 'Aye,' and those opposed will say 'No.'" The secretary then calls the roll and records the vote of each member as he responds. It is the duty of every member entitled to vote to do so, though he cannot be compelled to vote. Members not voting are deemed as acquiescing in the action of the majority. The chairman may vote when the voting is by ballot, or by yeas and nays, and in other cases when his vote can change the result.

Motions.—The twenty parliamentary forms or motions commonly employed serve several general purposes, and so fall into four main groups. The first of these groups is known as principal motions and is defined to be those that are never in order except when no other business is before the assembly. Three motions belong to this group, *viz.*, main motions; the motion to rescind or to repeal; and the motion to expunge. Main motions are those designed to bring original business before the assembly. Such a motion must not conflict with the constitution, by-laws, rules of order, or standing rules of the assembly. It is open to remarks and requires a majority vote for its adoption. To rescind or repeal is a motion intended to annul a resolution or order of the assembly after it is too late to go back to it by a process of reconsideration. The motion is subject to the same rules which govern a main motion. To expunge is a motion employed when an assembly wishes to completely disavow a former action or record. This calls for the drawing of a line around the portion of the record to be expunged, and writing across the face of it the words, "Expunged by order of the assembly this —— day of —— A. D. 19—."

The second group of motions are called subsidiary motions. They include those that are applied to other motions for the sake of disposing of them or of modifying them, or of cutting off debate on them. There are six of these motions and they are named in the order of their precedence from the weakest to the strongest. That is to say, with the exception of the first and second motions named below, which are of equal rank (neither one yielding to the other), any one of these motions may be made while one or more of those above it in the list are pending (*i. e.*, made, but not voted on), but may not be made if any below it in the list are pending. If offered in the order of their precedence, therefore, there might be five of these motions pending at once in addition to the original main motion to which they are applied, and when finally acted on, the last one offered would be the first one upon which to vote. If that were lost, then the next one would be up for vote, and so on. The first four of the motions are debatable and the last two are undebatable. They all require a majority vote to carry them except the fifth, which requires a two-thirds vote. The list of the subsidiary motions and the purposes of each are as follows: (1) *To postpone indefinitely* has for its purpose the disposal of a question for the session without voting on it directly. Its effect, if carried, is practically to postpone the question perpetually. (2) *To amend* provides a means for modifying the original question by additions, substitutions, eliminations, or by any two or all of these forms of modification. (3) To *commit, or refer*, secures the advantage of action by a smaller group or committee, or of greater freedom in debate (committee of the whole) in dealing with a question. Committees are either standing committees, special committees or committees of the whole. (4) To *postpone to a certain time* defers action on a question till the time specified. (5) *The previous question* is a motion whose purpose is simply and solely to stop debate on a question so as to bring it to a vote. (6) *To lay on the table* accomplishes the indefinite postponement of a question. The question may again be taken up, at a time when no other business is before the assembly, by a motion *to take from the table* the question previously laid on the table.

Incidental motions constitute the third group of parliamentary motions. These are motions that arise out of other questions or rules and their purposes are as various as the motions. The order in which they occur below is without significance. Any one of the motions takes precedence of subsidiary and principal motions and yields to all privileged motions. Appeals and reconsideration are sometimes debatable, while the other motions in the group are not debatable at all. They all require a majority vote except suspension of rules and the question of consideration. These require a two-thirds vote to carry. (1) *Suspension of rules* may be applied only to standing rules and rules

of order, and make temporarily possible an action contrary to such rules. (2) *Withdrawal of a motion* permits expediting business in case of changed opinion on the part of the maker of the motion. (3) *Reading of papers* is a motion designed to permit the giving of written information to an assembly. (4) *The question of consideration* (*objection to the consideration of a question*) enables an assembly to avoid irrelevant, unprofitable, or contentious questions. It applies to a main question only. (5) *A question of order, or a point or order*, calls attention to a violation of a rule of the assembly. When the attention of the chair has been called to the broken rule, the chair gives the decision as to whether the rule has been broken or not. An appeal may be made from the decision of the chair only on questions involving the judgment of the chair, and does not apply to cases where the rule plainly states what should be done. (6) *To reconsider* has for its purpose the modification or annulment, within a limited time, of any action already taken by the assembly. This is the most complicated of all forms of procedure.

Privileged motions arise independently of other motions and concern themselves with the needs of the assembly. They are five in number and are quite variable in their purposes and in the rules by which they are governed. Only the second in the list is always open to debate, and a majority vote will carry any one of them. These motions take precedence of all other motions, and among themselves the order of precedence is the order in which they are here given. The strongest of all motions is the motion to *fix the time at which to reassemble.* (1) *A call for the order of the day* brings before the assembly a subject assigned to the time when the call is made. (2) *Questions of privilege* secure to the assembly or any of its members some right with respect to safety, comfort, dignity, reputation, or freedom from disturbance. (3) *To take a recess* suspends all business for a time without interfering with the continuity of the meeting. (4) *To adjourn* brings a meeting to a close. (5) *To fix the time or place at which to reassemble* accomplishes just what its name indicates and is used when conditions are such as to make this necessary or desirable.

See Division of Powers; Rules of Congress; Rules of Legislative Bodies; Speaker; Voting in Legislative Bodies.

References: L. S. Cushing, *Rules of Proceeding and Debate in Deliberative Assemblies* (1869); T. B. Reed, *Manual of General Parliamentary Law* (1898); R. Waples, *A Handbook of Parliamentary Practice* (1901); E. Palmer, *A New Parliamentary Manual* (1901); E. A. Fox, *Parliamentary Usage for Women's Clubs* (1902); A. C. Hinds, *House Manual* (1909); H. M. Robert, *Rules of Order* (1904); F. M. Gregg, *Handbook of Parliamentary Law* (1910).

Fred M. Gregg.

PAROLE SYSTEM. Under the indeterminate sentence it is provided that the prisoner may be released on parole subject to a return to prison for the completion of his sentence in case he violates the conditions of the parole.

Usually no prisoner is allowed to be paroled until employment has been secured for him with some individual who knows his history and who will not discharge him because of his prison experience. The paroled man is required to proceed at once to his place of employment; not to change without permission of the prison authorities; to refrain from intoxicating liquors, gambling and other vices; to avoid bad company; to save as much as possible of his wages; and to report at stated intervals to the prison authorities. One or more parole agents are appointed to exercise a friendly and helpful supervision. When the prisoner has satisfied the officers of his ability to lead an upright and law abiding life he receives an unconditional discharge, usually after a probationary period of six months to a year.

The question of the parole of the prisoner is decided either by the governing board of the prison or by a special pardon board established by the legislature for that purpose. The best authorities recommend that the question of parole be decided solely on the record of the prisoner and the belief of prison authorities that he has attained such character that he can be safely trusted at large; and that no petition or personal influence of outside parties should be allowed to influence the question of his parole.

Objection has been made to the parole system on the ground that it is too lenient and that it lacks the determined effect of the time sentence. Experience proves that hardened criminals prefer a time sentence to an indeterminate sentence for the reason that the prisoner serving the time sentence must be released upon the expiration of his sentence and can reduce his term by compliance with the prison rules; while in order to profit by the indeterminate sentence he must exert himself and must exercise a self-control which is contrary to his desires. Statistics prove that the average stay in prison is longer for the same offense under the indeterminate sentence than it is under the time sentence. It is the general testimony of prison officers and penologists that better reformatory results are attained under the indefinite sentence than under the time sentence.

See Criminal, Reformation of; Indeterminate Sentence; Prisoners, Probation of.

References: G. Hoadley, "The Pardoning Power" in Natl. Conference of Charities and Correction, *Proceedings*, 1886, 77–89; American Prison Assoc. (formerly Nat. Prison Assoc.) *Reports* (1870 to date); F. H. Wines, *Punishment and Reformation* (1910); C. R. Henderson, *Penal and Reformatory Institutions*

(1910); H. H. Hart, *Preventive Treatment of Neglected Children* (1910); Z. R. Brockway, *Fifty Years of Prison Service* (1912); N. Y. State Reformatory, *Annual Reports* (1897 to date); *American Year Book, 1910,* 464–466, *ibid, 1911,* 383, *ibid, 1912,* 443.

HASTINGS H. HART.

PARSON'S CAUSE. In early days in Virginia the clergy were paid in tobacco. In 1758 the legislature passed the famous "option law" or "twopenny act," providing that at the option of the vestries the ministers should be paid not in tobacco but in paper currency at the rate of twopence for each pound of tobacco. This was an arbitrary and unjust law; for the paper money was depreciated and tobacco was high. This law was disallowed by royal authority in England. In 1763 the Rev. James Maury's demand for damages was brought before a jury in the court of Hanover county. The trial is especially significant because of the speech of Patrick Henry, then beginning his career as a lawyer, statesman, and orator. He boldly upheld the option law as good law. "It was," he said, "a law of general utility, and could not, consistently," with what he called the original compact between king and people . . . "be annulled." He went on to declare "that a king by disallowing acts of this salutary nature, from being the father of his people, degenerated into a tyrant, and forfeits all right to his subjects' obedience." Such utterances appear to have astounded many of his hearers, and cries of "Treason! Treason!" were heard. But the jury, carried away by Henry's eloquence and doubtless feeling hostility to the established church, gave the poor parson one penny damages. This trial, therefore, is well considered one of the opening scenes in the American Revolution; it foreshadowed the later opposition to kingly authority and foreshadowed also the disappearance of the established church. See HENRY, PATRICK.

References: M. C. Tyler, *Patrick Henry* (1899), ch. iv; W. W. Henry, *Patrick Henry* (1891), I, 34–43; G. Morgan, *The True Patrick Henry* (1907), 58–74.

A. C. McL.

PARTICULARISM. As a term of political science, particularism has reference to the exclusive attachment of a party, group, or nationality to its own local interests. It may be contrasted with nationalism which regards the general interests as of paramount importance to those of a particular group or community. In federal states as well as in unitary states composed of heterogeneous nationalities, the spirit of particularism is always present in some degree or form. In the United States it has found notable expression in the attachment of the southern people to their respective states and as a consequence, the political party to which they have uniformly given their support has been in some degree particularistic in its aims and principles. In Germany, likewise, there are various political groups or nationalities whose aims are primarily particularistic. Such are the Centrists, the South Germans, the Danes, Poles, Alsatians and other races each of which is the advocate of interests which are local rather than national in character.

J. W. G.

PARTIES IN CONGRESS. See CONGRESS OF THE UNITED STATES, POLITICAL PARTIES IN.

PARTIES, STATE AND LOCAL

Absence of State Parties.—By the Federal Constitution many important powers are reserved to the separate states. The conduct of state, local and city government, the exercise of police power, the control of the liquor traffic, the organization of public schools and much other weighty business are all matters of state policy. Since the field for state activity is so wide and so diversified, one might assume that distinctive state parties would arise to strive for control of the state governments. But as a matter of fact there are no permanent state or local parties. Opposing interests express themselves through the regular national parties or through new parties which try to become national. Nevertheless local issues have often given rise to temporary organizations which have greatly affected party action in the state. The question of religious education in the public schools has frequently become a state issue which at times has been accepted by the regular parties (*see* BENNETT SCHOOL LAW); at other times it has been taken up by a separate temporary party. The "Readjuster party" in Virginia was formed on the issue of the state debt, and for a time held the balance of power between the regular parties. No mere state party has ever long maintained itself as such. Either it is absorbed by one of the national parties or it disappears. Tammany Hall (*see*), which originated in New York City as a local reform association, owes its permanence to its having been adopted as the regular city organization of the national Democratic party. The reform society has been forgotten but the powerful Democratic club persists. If such state or local parties gain their ends it is by forcing one or other of the greater organizations to adopt their views on special local issues.

Growth of the National System.—Party division in the nation has developed out of pure-

ly national issues. One section of the people has favored a strong central government; another has emphasized the importance of the several states. The national bank, protection or free trade, territorial expansion, all are national party issues, and concern the government at Washington. But national parties standing for questions of federal interest must seek to carry the elections in the smallest precincts; and to this end they early created local party organs. Federalists and Republicans were found in every political subdivision, as were Whigs and Democrats later. The voter felt himself an active part of a great national organ and gradually he began to express his partizanship by nominating and electing local officers under the party name. Thus everywhere national party affiliation became the basis on which local and state officers were chosen. Party names became fixed on certain areas; "Whig states" often contained Democratic counties or cities, and "Democratic states" did not lack important Whig communities. This practice of local division on party lines contributed to the building up of the convention system of party government. The national committees reached down through the descending scale of conventions and committees to the smallest area and even to the individual voter. In each state the particular form of party organization depends entirely on the peculiarities of state and local government. In New England, where the town is the important unit in local government, the town party committees and party caucuses control local action. In the South county officers and committees govern the party. In states where local government is divided between township and county, party organization shows similar divisions of power. Each state has adapted the party to its own institutions and its own local needs, and the national parties work through diversified local organs.

Federal Organization.—Party organization in America, then, is in form, federal like the government. The permanent parties are national, with diversified state and local units, adapted to varying local needs. They continue to draw their life and inspiration from national issues, while working through varied local machinery. The national party committees and conventions do not greatly interfere with the workings of the party within the state. Even in a machine-managed state the national committeemen seldom interfere with local party prejudices. The states go their own way and, in general, act independently. Much local variation is noticeable. In the South, for instance, the Democratic party has become traditionally devoted to advanced temperance legislation, while in sections of the North the Republican party holds the same position. As regards the public school system, the government of cities, reforms in taxation, woman suffrage and all state and local issues, the parties are equally open to influence on the part of their members. The same reform may be championed by opposing parties in different parts of the country. In respect to special reforms it may be said that the states have their own local parties extemporized out of the organization of the national parties. On local issues of a permanent character the two parties tend to become permanently identified with opposing policies. One party, for example, is likely to be more aggressive and radical than the other in the control of railroads and other public service corporations within the state.

The conclusion is, therefore, that strictly speaking there are no permanent state and local parties, but only local adaptations of the national parties. In matters of governmental authority the states and the general government are in large measure independent. There may even be serious conflict between them. The cities and states, on the other hand lay no claim to independent party authority. All speak in the name of the national party. The parties have been the great unifiers of the people, enabling all sections to feel and act together with a common purpose. Especially have the parties trained the people to disregard state lines. National party policies may affect in a peculiar manner certain sections of the country. In such a case it is not usually a state which opposes or favors a special party policy, but a group of states interested alike in agriculture, manufacturing or mining. Party organization, therefore, is not federal except in the mere matter of form and adaptation to local needs.

United States Senators and State Parties.—The election of United States Senators by state legislatures has concealed this tendency to adapt national parties to local issues. Now, since the Seventeenth Amendment provides for popular election of United States Senators, state lawmakers are relieved from this function and voters in each state can make freer use of local party organs in settling state and local affairs. Membership in the great national parties may now be determined by one's attitude toward national policies, and one will more readily register his views on local and state matters through the ballot. It was a mere accident if the policy for which the Democratic party stood in Congress corresponded with the convictions which a member of that party held on a state issue. When party policies in state and nation are both presented to the voter's mind, he must sacrifice his convictions as to one branch of government to his greater interest in the other. Freedom in voting for separate state and federal lawmakers should strengthen interest in local political issues.

City Parties.—In our scheme of government the city possesses a wide field for independent action. Especially does the great city, with

its vast systems of water and light supply, street cars, docks, etc., demand a special form of government to fit its peculiar needs. These interests may give rise to factions and city parties which become more or less permanent. Citizens' parties are frequently organized to combat some local evil or to secure a needed reform. These municipal parties may continue through several campaigns and acquire the characteristics of permanent organs of public opinion. The interest of the entire nation turns to the great cities like New York, Philadelphia, Chicago and San Francisco, where, owing to the special problems of municipal administration and the density and diversity of the population, local politics has become all-absorbing.

Since New York City leads a political life of its own, often at variance with that of the rest of the state, the rise of a local reform party here has been made comparatively easy. Opposition to Tammany (*see*) at last crystallized into a citizens' party which entered the local contest. The campaigns in which Seth Low (*see*) headed the citizens' ticket have become famous. They furnish a fine example of the rise of a purely local party in a metropolis (*see* NEW YORK CITY).

In Philadelphia, where the city government is a part of the state machine (*see* PARTY ORGANIZATION IN PENNSYLVANIA) reform has followed a more varied course. Citizens' parties under various names and forms have tried their strength against the "ring" and have been broken by it. They have not been able to persist until good government had become a habit. Movements for purer politics have also endorsed nominees of the regular parties instead of putting new and independent tickets in the field.

Division between the adherents of the two great parties is fairly even in Chicago. Consequently reformers from the membership of both parties have united in a Municipal Voters' League (*see*), which, since 1896, has labored for righteousness by making public the votes of members of the city council. The League puts no ticket in the field, but endorses a list of nominees selected from the candidates put forward by all parties.

San Francisco presents a complicated situation. A city Labor party controls the union votes and is exceptionally strong. Civic reformers also put a ticket in the field. Under the present California law, party names are not allowed on the ballots in city elections so that the apparent situation is that of completely different parties in the city and the state. The distinction proves, however, to be superficial, and the real contest is usually on the same lines of cleavage as in the state at large.

See INDEPENDENT MOVEMENTS IN POLITICS; REFORM MOVEMENTS, POLITICAL; and under PARTY; VOTERS; VOTING.

References: C. A. Beard, *Am. Government and Politics* (1910), ch. xxx; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, ch. xlvi; J. Macy, *Party Organization and Machinery* (1912), ch. viii; A. C. McLaughlin, "Significance of Political Parties" in *Atlantic Monthly*, CI (1908), 145–156. State platforms are in some states printed as public documents.

JESSE MACY.

PARTISAN POLITICAL ORGANIZATIONS. See COUNTY DEMOCRACY; POLITICAL CLUBS; ORGANIZATION; TAMMANY.

PARTISAN RANGERS. A name given the members of an independent body of troops carrying on guerilla warfare. Such troops were authorized by the Confederate Government and were especially numerous in the border states during the Civil War. O. C. H.

PARTY CIRCLE. The most popular form of the Australian ballot, is the party column type. On this ballot the names of all the candidates of each party are grouped, candidates for the same office being on the same horizontal line in each column. At the head of the column stands the party circle, which may be identified by some party emblem as well as by the name printed above it. The Republican party usually displays an eagle; the Democratic party, a game cock; and the National Progressive party, a moose's head; but the emblem varies in different states. Among minor parties a greater variety usually appears. The printing of the party circle furnishes a direct inducement toward voting a "straight ticket" (*see*) since one mark in this space votes the entire column. Though the amount of effort required for "scratching" varies greatly it is always more than is needed for "voting straight." Mr. Allen has demonstrated in his article on "Ballot Laws" that more than twice, sometimes ten times, as much discrimination in voting is shown where "scratching" is easy as where it is more complicated and difficult than "voting straight." To the illiterate voter the party circle is indispensable. In Denver a burly Irishwoman once touched the woman in the next booth and whispered, "Oi am a Democrat. Do Oi put me mark roight on the rooster?" Before officially printed ballots were required, one favorite trick consisted in distributing ballots of one party bearing the insignia of the other at the top. Although this was usually a penal offense it continued to be committed in various forms up to the time when official ballots were required. See BALLOT; BALLOT, SHORT; ELECTION SYSTEM IN THE UNITED STATES. **References:** P. L. Allen, "Ballot Laws and their Working" in *Pol. Sci. Quart.*, XXI (1906), 38–58; C. A. Beard, *Am. Government and Politics* (1910), 678; P. S. Reinsch, *Readings in Am. State Gov.* (1911), 364–372. J. M.

PARTY EXPENDITURES, PUBLICITY OF

Need of Publicity.—A growing demand for publicity of campaign expenses has evoked much legislation on the finances of party committees and candidates. This insistence has increased with the recognition of the great abuses which the system of party organization permits. Irresponsible party committees handle vast campaign funds that they have gathered in secret and may spend without accounting to anyone. Occasional revelations of wholesale bribery have roused public curiosity. In the election of 1896 this amassing of immense funds to be expended by the national Republican committee reached the high water mark. The amount that "Mark" Hanna (*see* HANNA, MARCUS A.) controlled in that campaign is variously estimated at from six to sixteen millions of dollars. The contrast with campaign funds of thirty years before forced itself upon public attention. From the politicians themselves, also, a demand for publicity has come, as they have realized the crushing power of the system that the boss and the machine have developed. Parties have found it increasingly difficult to carry elections without being subsidized by large contributions from corporations and individuals who looked on their gifts as business investments. Then, too, the knowledge that money was available raised the demands of committees and party workers all along the line. More money for less work led to demoralizing waste of funds. In some districts the machine attempted to limit corruption in self-defense. The chairmen of the county committees in Chemung county, New York drew up and signed an agreement, in 1905, in which they pledged themselves to limit their election expenses to $40 for each district, to refrain from the purchase of votes, to unite in prosecuting election frauds and to pay a reward for the conviction of any person found violating the election laws. Similar compacts have been reported from other states. Some corporations have declared for publicity in order to relieve themselves from the exactions of party committees, who practically forced them to make large campaign contributions or suffer from hostile legislation.

Legislation.—A discussion of many laws intended to regulate campaign expenditures is given in the article on CORRUPT PRACTICES ACTS (*see*). Many of these acts contain sections which require publicity as to the sources and uses of money expended by both candidates and political committees. Thirty-five states have now (1911) such statutes ranging from the brief and incomplete law of Louisiana, which requires a statement filed by the candidate and committees within thirty days after the primary or election, to the thoroughgoing laws of New York, Pennsylvania, Oregon and Wisconsin. Some of the most recent statutes require publication of financial statements at specified intervals before the primary or the election. Florida requires the candidate to publish a sworn itemized statement to date not later than ten days before the primary, (1909) and a complete statement within ten days after, accompanied by a list of his political workers. Refusal to comply renders the candidate liable to a fine, and his name will not be placed on the official ballot or presented to the legislature as a candidate for United States Senator. Nebraska demands not only that candidates and political treasurers file expense accounts to be public for four years, but also that fifteen days before the primary the political treasurer shall file a statement of campaign expenses and "thereafter make daily reports of all contributions over $25." Failure to comply or defacing of his accounts subjects the political treasurer to imprisonment for from two to six years. A few states recognize the importance of others than candidates and treasurers, through whose hands funds may be collected or distributed and Indiana (1911) has adopted the English plan of requiring candidates to work through "political agents" in order to prevent the irresponsible distribution of campaign funds. South Dakota (1907) puts a check upon the political treasurer by the requirement that a secretary shall also be appointed in each political committee. The secretary receives all contributions and turns them over to the treasurer who may expend them only on receipt of a voucher signed by the secretary. These vouchers become a part of the records which must be open to the public. In Oregon the accounts of candidates and political parties must be open to the inspection of opposing candidates or parties.

National Elections.—Publicity of expenditure in national elections first became a prominent issue in the campaign of 1908. The Labor party had agitated for publicity in the campaigns of 1906 and had committed itself to publicity by publishing detailed financial reports of its political committees in the reports of the American Federation of Labor. This party financed itself by voluntary contributions and did not permit its candidates to make any contributions to campaign funds. In December, 1907, the Democratic national committee resolved to favor a federal publicity bill. This action harmonized with the view of Mr. Bryan, the chief candidate for the Democratic nomination. The following April, Secretary Taft, the leading candidate for Republican nomination, also expressed himself in favor of such a bill, but the national Republican convention voted

down the proposed publicity plank. Thereafter the national Democratic convention declared for publicity of political receipts and expenditures before as well as after the date of election. Democratic confidence in the principle was evinced by the voluntary publication of receipts during the progress of the campaign. This course of action won popular approval although it did not succeed in securing a majority of votes. Mr. Taft also announced his intention of publishing a statement of expenses after the election under the law of New York.

Publicity before Election.—The required publication of expenses by candidates, committees and all others handling funds has been found to aid in purifying campaigns. That political campaign funds are public funds and thus rightly subject to legislative control is now generally accepted. The citizen, the law-abiding corporation, the officeholder and the candidate are all protected by such control. The machine boss, the corrupting corporation or individual purchaser of influence or office, the irresponsible hired "worker" and the venal voter are the only ones who profit by the other system. If publication of campaign expenses a month or more after the election, when general interest has declined, is helpful, it would seem that the moral influence of immediate publication at intervals during the heat of the campaign would be even more effective.

Congressional Enactment.—In 1910, Congress passed a publicity bill which required each political committee to file with the clerk of the House of Representatives, within thirty days after a national election, a complete financial statement of the receipts and expenditures. Political committees, according to the act, are the national committees and the national congressional committees of all parties and "all committees, associations or organizations which shall in two or more states influence elections or seek to influence elections at which Representatives in Congress are elected." The penalty for wilful violation of the provisions of this act is a fine of $1,000 or one year's imprisonment or both. In 1911 this act was so amended as to require preliminary statements of receipts and disbursements between fifteen and ten days before the election and every six days thereafter during the campaign. The amendment further provides that senatorial and congressional candidates shall be required to make statements of their expenditures in like manner. These expenses shall not exceed $10,000 for a senatorial candidate and $5,000 for a congressional candidate, exclusive of state fees, assessments, etc., and "necessary personal expenses." This applies to candidates before primaries, nominating conventions and legislatures as well to those in the regular election. But since the "necessary personal expenses" which are excluded from publication include traveling expenses, printing (except in newspapers), postage etc., and practically all the legitimate objects of expenditure, it promises to impose slight restriction on the candidates. It lacks also a clause compelling the clerks of the houses to make public the reports of candidates filed with them. Committee reports were specified in the original bill as public documents open to inspection for fifteen months.

See CORRUPT PRACTICES ACTS; PARTY FINANCE.

References: P. Belmont, "Progress of Campaign Fund Publicity" in *North Am. Review*, CLXXXIX (1909), 35-42, "Publicity of Election Expenditures" in *ibid*, CLXXX (1905), 166–185; *Statutes at Large of U. S.*, XXXVI, 61 Cong. (1909–11), ch. 392; "Publicity of Election Contributions and Expenditures" in *Sen. Docs.*, 60 Cong., 1 Sess., No. 337 (1908); *Statutes of U. S.*, 62 Cong., 1 Sess. (1911), ch. 33; *Democratic Platform, 1908;* R. C. Brooks, *Corruption in Am. Politics and Life* (1910), 229–244; C. L. Jones, *Readings on Parties and Elections* (1912), 302–318. JESSE MACY.

PARTY FINANCE

Need of Funds.—In the two chief parties more persons serve on party committees, attend party conventions or hold some party office during a presidential campaign than are chosen by popular election to fill all local, state and federal offices. The necessary and legitimate expenses of such organizations are large. Numerous party officers, during the months of the campaign, devote their entire time to the service of the party. Many do this without pay and even meet their own personal expenses besides. There are, however, permanent paid secretaries and other party workers whose salaries are drawn from party funds. It is accounted legitimate to pay the expenses of canvassers, of those looking after registration, and in some cases to employ public speakers, or at least to pay their expenses. To maintain party headquarters in the cities involves large outlay for rent and clerical service. The cost of halls for public meetings, of brass bands, processions, posters, the printing and circulating of political literature, are all regarded as proper party expenditures.

How Funds are Raised.—Party organizations are supported, in the first place, by voluntary contributions and the unpaid services of party members. This income is increased by gifts, often very large, from public-spirited men of wealth. In the case of third parties or

a minority party the contributions from the rank and file of their adherents are the chief source of income. General Weaver, who was the candidate for the presidency on the ticket of the People's Party in 1892, met the expenses of his campaign by free contributions collected at public meetings.

It is exceedingly difficult to maintain a clear line of distinction between proper and improper sources of party income. Those who give time and money without any hope of office or personal reward of any kind are worthy of the highest commendation. But some apparently disinterested voters and supporters fall heir to fat appointments or business contracts with suspicious regularity. Party committees have always received special contributions from the candidates for offices. In some cases this is the chief source of income. The laws recognize both the legitimacy of this practice and its liability to abuse. Contributions from candidates beyond a specified sum are therefore made illegal (*see* CORRUPT PRACTICES). Candidates may contribute to party funds, but they may not purchase office. The dividing line, however, is not easily determined. Again, those holding appointive office or expecting appointments contribute to the party funds. Here also generous and patriotic support of the party shades into the criminal purchase of office (*see* BRIBERY; CORRUPTION). While party committees are forbidden to levy assessments on federal office-holders, those officers may make voluntary contributions (*see* ASSESSMENTS FOR PARTY PURPOSES). The large gifts from the wealthy are likewise subject to the rule of gradual transition in motive from generous patriotism to insidious corruption. From the purest of motives men contribute large sums for the support of their party, yet rich men are usually engaged in business which is liable to be affected by acts of the government. One object of the party is to safeguard business interests which may be identical with the good of the state. With entirely good conscience business men seek to impress upon party leaders the value to the commonwealth of their own industrial enterprises. They support the party for the sake of their business and for the good of the state. But it is now notorious that the system has gradually worked evil. Since the Civil War a very large proportion of the wealth of the country has become concentrated in few hands through the improper use of governmental power. Promoters of corporations, sometimes organized with the conscious purpose of fraud or robbery under governmental sanction or protection, may be liberal in supplying party committees with funds. They may contribute to both parties or to all parties capable of being used to further their ends, and their gifts must be regarded as corruption funds. But, after all, questionable party contributions come not so much from conscious criminals as from the lines of business in which there is a mixture of abuse with a real public service. A frank and open donation to party expenses may be a thoroughly honorable act, while bribing a city council or a state legislature, or paying blackmail to an administrative officer, are all unquestionably dishonorable; yet in many cases the one is made a substitute for the other. The large cities furnish opportunities for securing party funds through means which are plainly criminal. Such are the levying of blackmail upon legitimate business and the sale of the privilege of committing crime in security.

Irresponsible Committees.—Party finance is concerned not only with the raising of funds, but also with the spending of the money and the balancing of the books. Party committees handle the money and their proceedings are mainly shrouded in mystery. No records open to the public are kept; until required by recent legislation, committees have made no public reports; large amounts have been secretly collected and expended in unknown ways. The Republican national committee of 1896 had at its disposal a fund variously estimated at from six millions to sixteen millions of dollars, and it is known that much of this money came from business corporations. At that election the Republicans carried many doubtful states, and it has been stated that the scale was turned in several instances by the direct purchase of votes.

For various reasons the public has come to know much more about the criminal raising and expenditure of party funds than about the legitimate side of party finance. The relation of the city boss and the party machine to city crime was fully exposed by the Lexow committee in 1893; and similar exposures have been made in many cities since. Wholesale bribery has been often laid bare, and the general public has become aware that it is the practice of those debasing influences in our political life to deal with the party boss and the party committee rather than with the officers of the government. It is becoming clear that the demoralization of party politics has to a great extent grown out of the fact that irresponsible committees in many cases handle large sums of money for which no account is rendered.

Attempted Reforms.—Out of these conditions has arisen the demand for limitation of party contributions and publication of the receipts and expenditures of the committees (*see* PARTY EXPENDITURES, PUBLICITY OF). Various states have taken legislative action on this subject. The earlier laws required a statement of accounts to be filed by candidates and committees after the election. This, however, has been found unsatisfactory. The national Democratic platform of 1908 arraigns the Republican party for its practice of receiving from corporations large sums of money wherewith to carry elections, under the expressed or im-

plied agreement that fraudulent or illegal conduct on the part of the companies should be permitted to continue. The platform then pledges the Democratic party to the enactment of a law to prevent corporations from contributing to campaign funds, limiting donations from individuals and providing for the publication of a financial statement before election. The Republican candidate accepted the challenge of the Democratic platform and filed a statement of contributions and expenditures as required by the New York state law. Congress has since passed a law in harmony with the pledges of that Democratic platform.

But the cutting off of large gifts from the corporations and rich individuals by no means corrects all the evils that have grown up under the previous system of party finance. The rank and file of party members have lost the habit of contributing to the support of the party, having become trained in the notion that a ruling party exists to bestow personal favors rather than to receive support from its members. The partial reforms that have been inaugurated also serve to increase the exactions from candidates and force honesty and small means out of political office. The primary election laws, for example, require a considerable outlay of money to secure the required petitions. The injustice of placing such burdens upon the candidate has been recognized and it has been proposed to pay the necessary party expenses out of state funds. This is one more step in the direction of incorporating officers of the party into the body of government officials. When this has been fully done party finance will have become an item in public finance. Colorado has taken a long step on this road by arranging to pay the state committee of each party twenty-five cents for each vote cast by that party for governor in the last preceding election and forbidding all other contributions except from the candidates.

See Assessments for Party Purposes; Corrupt Practices Act; Corruption, Political; Lobby; Party Expenditures, Publicity of; Party, Place and Significance of; Spoils System.

References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), chs. xvii, xviii; J. Macy, *Party Organization and Machinery* (1912), ch. xvii; H. J. Ford, *Rise and Growth of Am. Politics* (1898), 313–320; P. S. Reinsch, *Am. Legislatures* (1907), ch. viii; J. Bryce, *Am. Commonwealth* (4th ed., 1910), chs. lxiii, lxvii; J. G. Speed, "How Votes Are Bought in New York City" in *Harper's Weekly*, XLIX (1905), 386–388, "How Votes are Bought in New York State" in *ibid*, 422–429; R. C. Brooks, *Corruption in Am. Politics and Am. Life* (1910); L. E. Aylsworth, "Corrupt Practices" in *Am. Pol. Sci. Rev.*, III, 1909, 50–56; J. W. Jenks, "Money in Practical Politics" in *Century*, XLIV (1892), 940–5; C. A. Beard, *Readings in Am. Government and Politics* (1911), 572–577; C. L. Jones, *Readings on Parties and Elections* (1912), 306–18; C. A. Beard and B. E. Shultz, *Documents on Initiative, Referendum and Recall* (1912).

Jesse Macy.

PARTY GOVERNMENT, COMPARATIVE

The Dual System.—Although political parties exist wherever the people are recognized as a source of authority or influence, only in Anglo-Saxon states do political parties, as definitely recognized corporate bodies, assume the responsibilities of government. In England and her self-governing colonies and in the United States parties govern. These states are under the dual party system, *i. e.*, two parties compete with each other for the control of the government. If other parties exist they have no share in the government except as they influence one or the other of the governing parties. In all other constitutional states parties simply influence government in the interest of special policies or special classes. The parties may be numerous, and government may be under the control of a temporary group or coalition of parties; but no party governs as such.

English Type.—England and the United States represent two distinct forms of party government. Of these the English type is by far the more simple and complete. The British Parliament is the sole agency for the exercise of supreme political power and the House of Commons controls the Parliament. "The party in power" is the one that has for the time being the majority in the House of Commons. Its leaders in the two Houses compose the Cabinet, each member of which fills an important administrative office. Thus the party in power through its Cabinet is responsible to the people for the administration of the Government as well as for its legislative policy. The Cabinet, supported by its majority in the House of Commons, is in fact as well as in name the Government. But the Cabinet as the organ of the party in power, or office, is compelled to transact official business under the eyes of a corresponding body of party leaders belonging to the Opposition (*see*) who will themselves form a Cabinet so soon as they can win a majority in the House of Commons. It is the business of the opposition to expose the weak points of the party in power and to present a more attractive policy to the voters. If, under the criticism of the minority, the Government

loses its majority in the Commons, Parliament is dissolved and the voters decide which Cabinet they prefer. The chief interest of the citizen is not in the member from his district, but in the Cabinet. He votes for a Liberal or for a Conservative member as a means of expressing his choice of a party.

The leading statesmen of each party who will take office when their party wins the election constitute a self-appointed party committee. They do not represent, for they are, the party organization. So complete is their control in the party that there can be no competing organs. Neither caucuses, nor conventions, nor clubs, nor party committees pretend to exercise party authority, since they are subordinate agents of the leaders of Cabinet rank. Public opinion profoundly influences the Cabinet by objecting to specific policies proposed or adopted, and the voters exercise authority by defeating or threatening to defeat the party at the polls. Cabinet government, then, is direct party government, the government itself being the organized party.

American Type.—In the United States, as in England, the two political parties strive for control of the government. Government in this country, however, means not a Cabinet exercising supreme power, but a great number of officers of various ranks exercising limited power. The President of the United States is nominated and elected by a political party for the fulfilment of whose pledges he is held responsible to the extent of his ability. The President's power over administrative and executive policies is complete. For his share in legislation, too, he is held responsible to the party. The members of the two houses of Congress are also nominated and elected by the parties, and the members of the majority, like the President, are held responsible for giving effect to party promises. The minority in each house assume, on behalf of their party, the duty of critics and censors of the government. When the President, the Senate and the House of Representatives are all controlled by one political party, that party becomes fully responsible for both legislative and executive policies. Much of the time, however, the party which has failed to elect a President controls one and sometimes both of the houses of Congress. This creates a condition of partially suspended party responsibility, although the party having the President is in nominal control. It is called the party in power, even though both houses may have a majority from the opposite party and be, therefore, in command of legislative action.

But party government does not end with the President and Congress. The same parties contend for the control of each of the states. The governor and half a dozen other executive state officers and the members of the state legislature are nominated and elected by the parties. Usually the same party controls the entire state government. The states are subdivided into counties, towns, cities, wards and precincts, in all of which the custom generally prevails of using the party machinery in the election of local officers. Against this practice of using party organizations in local, especially in city, elections a strong sentiment has grown up. Local needs are by nature non-partisan and the practical questions affecting town or city are often confused by the injection of national political issues into a local contest. Moreover, men elected on non-partisan tickets are considered freer to devote themselves to the good of the city regardless of the bearing their action may have upon general politics.

Contrast between the Two Types.—The contrast between party rule in England and in the United States is very striking. Since the British Cabinet is itself the only authoritative party organization, everything which the Government does, every measure proposed by a Cabinet minister, is an official act of the party. The Cabinet is the national party convention which never adjourns. While Parliament is in session the two national conventions face each other in the House of Commons. One party is always governing, the other is always presenting a rival policy. The American situation is more complex. The President of the United States is not the party in power, but is in a sense a subordinate agent of the party; the two houses of Congress are also separate, subordinate agents, pledged to fulfill those portions of the party promises that pertain to them. The supreme authority is the national convention, meeting every four years. The convention adopts the party platform and chooses the party candidates, while a committee of the convention issues a party textbook for the instruction of voters. Two years later, when members of the lower house only are to be elected, the party guide is prepared by a party committee. In the states and in local areas, official party utterance is through caucuses, conventions, party candidates and committees. The party has a distinct, permanent organization of its own by means of which it formulates and expresses party opinion and lays down rules for the guidance of those public officers of every grade whom it elects.

See CABINET SYSTEM; CONGRESS; CONGRESSIONAL GOVERNMENT; CONVENTION, POLITICAL; PARTY GOVERNMENT IN GREAT BRITAIN; PARTY ORGANIZATION IN LEGISLATIVE BODIES; PARTY, PLACE AND SIGNIFICANCE OF; PRIME MINISTER.

References: J. Bryce, *Am. Commonwealth*, (4th ed., 1910), II, ch., lix; A. L. Lowell, *Government of England* (1908), I, chs. xxiv, xxv; A. L. Lowell, *Governments and Parties in Continental Europe* (1896), I, ch. ii, II, ch. xiii; W. Wilson, *The State* (ed., 1909), chs. x, xi; J. Macy, *Party Organization and Machinery* (1912), chs. ii, iii; M. Ostrogorski, *Democracy and Party System* (1910), 130, 160–166, 175, 191

JESSE MACY.

PARTY GOVERNMENT IN GREAT BRITAIN

Origin.—Government by party—the system under which the party supported by a majority in the House of Commons is in control of the administration, and also of legislation—dates only from the Revolution of 1688. The germ of the party system first manifested itself in the Parliament at Oxford in 1625. At least as early as 1670 political parties known as Whigs and Tories were in existence. These political divisions became more marked at the Revolution. With the development of Cabinet administration in the reign of William III, party lines became permanent; and there is testimony by Burnet that by 1708 the system of government by party had extended into municipal life. There were, in the reign of Queen Anne, no questions of municipal administration—no matters touching the everyday economy of towns and cities—to which the principles of either Whigs or Tories were applicable. In many of the boroughs, however, members of the House of Commons were elected not by the inhabitants at large but by the municipal councils, and in many other boroughs the control of mayoralty or the power of making freemen carried the control of parliamentary elections. Men of the territorial class—men who seldom lived in the towns or cities—were at this period active in municipal politics with a view to the parliamentary elections; and Burnet's testimony that, in 1708, Whig and Tory mayors were elected, and that "in every corner of the nation the two parties stand as it were listed against each other," is proof of how quickly and generally the system of government by party, established at the Revolution, was accepted by the country at large.

No Legal Recognition.—There has never been a law recognizing the party system. Whigs and Tories, Liberals, Conservatives, Radicals and Socialists, are unknown to the constitution and to the Journals of Parliament. Administrations had been made and unmade by the party system, and speakers of the House of Commons had been elected on party lines long before there was a single entry in the Journals which directly or indirectly indicated the existence of opposing parties in Parliament. There is only one entry in the eighteenth century that suggests party lines or party organization. It occurs in 1743 when there was an unsuccessful attempt to prohibit members from pairing. To have prohibited pairing would have made an inroad on the power of the whips, or as these party officials were known in the eighteenth century "the whippers-in." It would have impaired the organization of parties in the House. Especially would it have weakened the organization of the party that was in power; and by a vote of what was for the eighteenth century a full House, the resolution to prohibit pairing was negatived by a majority of forty-two. It can be inferred from the structural arrangement of the old chapel of St. Stephen's in which the Commons held their sessions from the reign of Edward VI to 1835—a rectangular chamber, similar in arrangement to the present chamber at Westminster—that soon after government by party was established, members of the Cabinet and ministry and members supporting them sat as they do now to the right of the Speaker's chair, with members of the Opposition (*see*) seated to the speaker's left. The fact that seats to the right of the speaker were from early times set apart for members of the Privy Council—for what are nowadays members of the Cabinet—warrants this inference; but there is no proof of an earlier date than 1740 that government by party had introduced the now long-established grouping of parties within the House of Commons.

Whips.—Party whips (*see*) are a little older than government by Cabinet. They were issued during the convention Parliament of 1688. With the establishment of the Cabinet, whips issued to supporters of the Government became known as treasury notes, from the fact that they were sent out by the patronage secretary of the treasury—an office known in more modern times as parliamentary secretary to the treasury.

Control by Party Majority in Commons.—For over two centuries government by party in England has been accepted as inevitable, and the constitution and the representative system has been moulded to it. The loss of a majority in the House of Commons or defeat in a general election makes an end to an administration, and it is taken as a matter of course that the new administration shall be formed from the party that obtains majority. All the members of the administration go out of office with its defeat; and the usual procedure is for the king to call upon the leader of the successful party to accept the office of premier (*see* PRIME MINISTER) and to form a new administration. If an administration comes into power after a general election, there is a reorganization of the House of Commons; but the only important offices to which the holders must be elected by the House are the speakership and the deputy-speakership and chairmanship of committees. Since 1835 the speakership has been a non-partisan office—an office whose occupant must take no share in party politics either in or out of the House of Commons; and since that time also, unless a speaker desires to retire from the chair, it has been the rule that he shall be reëlected on the assembling of a

new Parliament irrespective of any change in the standing of parties in the House. If a new speaker is to be elected, he is chosen from the party in the majority and the choice of a speaker is determined by the administration. The chairmanship of committees is not a continuing office like that of the speaker. Its holder is the nominee of the Cabinet, and is not bound by the usage that decrees that the speaker shall be strictly non-partisan. On committees the majority in the House is represented by a majority.

Civil Service.—The civil service has been controlled by a board since 1855. Appointment by examination and promotion by seniority have long been its characteristics. There are, however, quite a number of what in the United States woud be described as non-classified offices. In appointments to these political influence is a factor. Many of them go to Liberals when a Liberal Government is in office, and to Conservatives when a Conservative Government is in power. Judges are also drawn from lawyers who are supporters of the Government in or out of Parliament. The dignity of king's counsel is as a rule similarly bestowed on barristers; and except in the case of military and naval commanders, distinguished civilians, and men distinguished in science, literature or art, knighthoods, baronetcies and peerages go only to men who are supporters of the Government in power. Offices and honors for party services are bestowed usually at the instance of the parliamentary secretary to the treasury—the erstwhile patronage secretary—who is the chief Government whip, and who with the aid of the junior lords of the treasury is responsible for keeping a House when Government business is the order of the day, and also for bringing members in for divisions.

Government of the Party.—Party organization in the constituencies is not nearly as widespread, as inclusive or as perfect as it is in the United States. It scarcely existed in England until the second extension of the franchise in 1867, and there is, as yet, no organization of the Conservative or Liberal party that corresponds to the national committee of the Republican or the Democratic party. Each party has a central committee in London which is in touch with the local organizations in the constituencies, and it is through the central committees in London that the chief whips of both parties assist the constituencies in the selection of Parliamentary candidates when local candidates are not available.

Four political parties are now recognized as entitled to a whips' room in the precincts of the House of Commons—Liberal, Conservative, Irish Nationalist, and Labor parties. This recognition is in itself an admission that the group system has been established. The group system had its beginnings in the Parliament of 1784–1880 when the Nationalists organized as a separate group, and first took up their permanent position on the opposition benches. The Labor party in its present day form had its beginnings in the Parliament of 1900–1905. Until 1874 there were only two parties—Liberal and Conservative; and when the Liberals were in power they were so maintained without any aid from outside their own ranks. Four times since the extension of the franchise in 1885, the Liberals have been able to obtain and hold office only by the support of groups with independent organizations. They were in power in the Parliaments of 1885–86 and 1892–95 by the aid of the Nationalists. They had a majority independent of both Nationalists and the Labor party in the Parliament of 1906–10. After the two general elections of 1910—the elections in which the budget of 1909 and the veto of the House of Lords were the issues—they were in power only by the support of the Nationalists and the Labor party.

See CABINET GOVERNMENT; CONSERVATIVE PARTY; HOUSE OF COMMONS; LEGISLATION, BRITISH SYSTEM OF; LIBERALS; NOMINATIONS IN GREAT BRITAIN; PRIME MINISTER.

References: A. L. Lowell, *Government of England* (1900), II, 1–128; E. Porritt, *Unreformed House of Commons* (1903), I, 445–488, 506–510. EDWARD PORRITT.

PARTY LABELS. The official emblem of a political party placed at the head of the party column on the Australian ballot to facilitate the voting of the straight party ticket by the illiterate voter. In some states the use of the party emblem on the ballot is forbidden by law.

See BALLOT; PARTY CIRCLE. O. C. H.

PARTY LEADERSHIP. England and America.—The state as an institution furnishes a means of harmonizing conflicting individual and class interests. It may accomplish this end through various instruments, but the state ruled by political parties acts through party organization and party conflict. Two parties, normally nearly equal in numbers and coextensive with the state, strive for control of the government. Their hope is to compose differences among their own numbers and to act as a unit against their opponents. Their chief aim is so to formulate and present political issues as to carry the election. The party leader is occupied with both of these functions, harmonizing the party and fighting its battles. In England, under the Cabinet (*see*) system party leadership in both lines of activity is identical with practical statesmanship. Usually the most capable statesman in the party wins the highest place by actually leading. He excels all others in harmonizing his party and in projecting government policies. The prime minister (*see*) and his associates lead their party by actually governing, and they hold their position only so long as they continue to lead in fact as well as in name.

The American party system presents a different problem. The party is itself a vast organization coextensive with the state but separate from the government. Party leadership cannot be identified with statemanship, for their relationship is of necessity accidental. A leader may render conspicuous service as a guide to public opinion but fail as a practical statesman; he may be eminent as a statesman and fail utterly as a popular leader. Both the party and the government involve an infinite detail of separate, disconnected functions so related that leadership is obscured; the case is exceptional where both evince unquestioned, clearly defined, personal leadership.

Leadership and Statesmanship.—The presidency is more closely related to party leadership than any other office, since the election of a President has furnished the occasion for creating and maintaining the vast machinery of the two parties. Presidents, however, have not usually been first nominated because of their previous prominence either as party leaders or as statesmen. After nomination and during the brief campaign, the presidential candidate is the official leader of his party. If elected, he becomes its official representative during his term of office. Whether in any personal sense he leads it depends upon his character and his relations to other leading persons and forces in the party and in the nation.

The two houses of Congress furnish the only official competitors with the President for party leadership. Members of Congress may be adjunct leaders or they may oppose the President as representatives of a strong faction within the party. For a brief time during Andrew Johnson's administration Congress did actually lead and it became the official means of developing party policy, enforcing its will against the President even in administrative matters. Thaddeus Stephens (*see*) as chairman for the House on the famous Joint Committee on Reconstruction wielded this power. At times, also, the Speaker of the House of Representatives has been as conspicuous as a personal party leader as the President. Speaker Reed probably wielded more influence over his party than did President Harrison, and Speaker Cannon later became for a time the virtual head of the organization. By gaining control of the House, the Speaker has acquired a veto power greater than that of the President and has dictated policies in the name of the party. Under the new rules, however, much of the personal power of the Speaker over legislation has been removed, and it is only at exceptional times that his influence has become dominant under any system. The Senate, also, through its control over appointment, and especially through the influence of individual Senators over the state party organizations, has, at times, been conspicuous in party leadership. A group of four or five men controlled the Senate in Grant's administration, and the Senators from Massachusetts, New York and Pennsylvania have habitually exerted nation-wide influence over their party. But recent tendencies point in the direction of more conspicuous and constant presidential leadership.

Nevertheless, so long as the executive and legislative departments are separated, and so long as official party utterance is lodged in a convention, statesmanship and leadership can with difficulty be identified. A leader may arise who, as governor of a state or as President of the United States, may so present his policies of government to his party as to secure their adoption. Such a leader inevitably comes into sharp conflict with another type of party leader who is accustomed to control the government by manipulation of the party machine. In the system at its best, entirely apart from corruption of any sort, the party tends to detract from personal statesmanlike leadership. The question always arises, how far the statesman ought to rely upon the party machine. If he goes far enough and comes to rely upon the prevailing methods of secret manipulation of caucuses he may, indeed, identify party and government, but in the process he may cease to be a statesman. Where statesmanship is thrown aside the boss governs by means of the party machine. Probably President Roosevelt came as near to controlling the party machine and leading the party as any President has done.

Leadership of a high type is even more difficult of attainment in the party of the minority in a country where the executive office is exalted so far above the legislative. A leader out of office can exert his influence only by way of destructive effort and criticism. Even if he goes to Congress he has no real opportunity to show his ability.

The New Leadership.—The modern idea that leadership may be identified with real statesmanship has been suggested in a number of states. La Follette in Wisconsin, Cummins in Iowa, Hughes in New York and Wilson in New Jersey, to mention only a few, have so successfully combined the two conflicting demands upon a party leader as to foreshadow an ultimate complete fusion of the leader and the statesman. In each of these instances the change has been accompanied by a weakening of party government and an effort on the part of the governor to establish the direct primary. Should a similar development follow in the presidential leadership it would be only through a relaxed grip of the typical machine.

See Boss; Candidate; Machine; Nomination of President; Organization; Party Government, Comparative; Party Organization in Massachusetts; Party Organization in Pennsylvania; Party, Place and Significance of.

References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), ch xvi, 232; J. Macy, *Party Organization and Machinery*

(1912), chs. iii, iv; C. A. Beard, *Am. Government and Politics* (1910), 205–207; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, ch. viii; M. Ostrogorski, *Democracy and Party System* (1910), 387–391; A. L. Lowell, *Government of England* (1908), I, 456, II, 86–100; H. J. Ford, *Rise and Growth of Am. Politics* (1898), ch. xxii. JESSE MACY.

PARTY ORGANIZATION IN CALIFORNIA. **Development of Railroad Control.**—California is notorious as a state that was dominated by a railroad. The entire organization of business and politics within the state was vitally influenced where it was not actually controlled by the great Southern Pacific corporation. In a thousand ways state and municipal officers, especially in San Francisco, the financial capital of the coast, came under its power.

The supreme position of the railroad and its allied corporations is the outgrowth of California's peculiar history. In the early isolation of the state the Central Pacific Railroad furnished the one connecting link between the rude mining camps and civilization beyond the mountains and the desert. The men who owned the railroad and consequently held the strategic point in all business operations also organized the Republican party and operated the state government. Leland Stanford became governor of California the year after he had helped to organize the Central Pacific Railroad. Two years later another member of the company withdrew from the corporation in order to be appointed to the supreme court of the state, and after his retirement from the bench he became counsel for the Central Pacific. Thus from the outset railroad interests and state politics were closely intertwined.

California and Pennsylvania.—As inevitably as in Pennsylvania, where business men became politicians, corporation methods were carried over to political organization. A machine of the efficient one-man type developed, using committees rather than conventions as the real governing bodies of the party. One striking difference, however, does exist between Pennsylvania and California. In the former state the Republican machine based on corporate forms has become so strong that other corporations as well as the public at large are subject to its control and dictation. In the latter, the political machine became subordinated to the interests of the leading corporation. Consequently a much more close and vital relationship between railroad business and all other interests and politics was here to be observed. The political department of the Southern Pacific Railroad (successor to the Central Pacific) dictated to the Republican state machine and also, as in other machine-dominated states, ruled their opponents. In the cities, notably in San Francisco, other interests appeared to be influential, but a study of their management almost always revealed railroad control.

No peculiarities in the form of local organization appeared. County home rule in many matters, and county committees emphasized the larger local unit. At the head of the usual hierarchy of district committees stood the state boss. The really remarkable fact about the machine was that the boss was not a Senator, not even an officeholder. The Senators of California did not lead their party. Real party leadership was the perquisite of the railroad and centered in the person of the chief legal adviser of the Southern Pacific. When the machine was running perfectly, he selected Senators, Congressmen, governors and judges and the three railroad commissioners.

Revolt.—But it is not to be supposed that so perfect a machine as that of California could be developed without the knowledge and opposition of many citizens. The first revolt against growing railroad power was headed by Dennis Kearney, a labor agitator in San Francisco (*see* CALIFORNIA). His Sand Lot meetings and other demonstrations gathered many working men to his support. In the state at large the Granger (*see*) movement had spread among the farmers. These two elements united in the effort which in 1879 secured a new state constitution. One aim of the constitutional convention was to remove the railroad from politics. This object, however, could scarcely be secured by constitutional enactment, and the railroad legislature which followed the convention contrived to minimize the effect of the prejudicial articles.

The makers of the new constitution expected much from the services of a railroad commission of three members to be elected by districts. The railroad, however, has seldom been seriously menaced by any action of the commission. Even the men elected on antirailroad pledges have not always remained true to the people. The courts, too, have at times given color to charges of prejudice which have been freely brought against them. The new constitution, intended to protect the people from the railroad, has been interpreted to nullify later legislation against the road and in favor of the interest of the people. Union labor, strong in all the cities, has, in San Francisco, maintained a city party of importance, but even this party has been more than once sold out to the road.

Recent Conditions.—The inevitable result of the machine rule was to reduce real party life to the lowest terms and to destroy the entire party system. When the organizations of all parties have become merely the political machine of one corporation, no weapon is left to the voter. Sporadic efforts at establishing new parties fail because of the overwhelming power of the perfected machine. The latest revolt, the one which promises most to the individual freedom of the voter, originated in a gradual growth of public opinion within the party and a determination to capture for purer politics the very machine which has prevented independent

growth. This revolt acquired a statewide organization in the Lincoln-Roosevelt Republican League. The league like the "regular" organization had its state committee made up of members from the eight congressional districts, its local clubs and committees and other organizations. Its representatives controlled the state legislature in 1911 and 1913 and passed many reform laws. Unquestionably the sweeping state-wide primary law, especially since its amendment, has helped to emancipate the voter. The elimination of the party column from the ballot, the direct election of United States Senators, and the shortening of the state ticket, are all expected to encourage intelligent and independent voting. The long tyranny did at length seem to arouse an equally determined resistance to unjust political domination. A sincere political reform promises well for the future of California.

See Boss; Committees, Party; Machine; Organization; Party Finance; Parties, State and Local.

References: J. Bryce, *Am. Commonwealth*, (4th ed., 1910), II, ch. xc; E. C. Meyer, *Nominating Systems* (1902), 193–204; F. Hichborn, *Story of the California Legislature of 1909* (1909).

Jesse Macy.

PARTY ORGANIZATION IN LEGISLATIVE BODIES

Different Types.—Party government is often called government by discussion. In a state thus ruled the legislature becomes the arena where party disputes are fought out and policies of state determined. The different types of free government, however, furnish striking contrasts as to the rules and conduct of these struggles.

England.—In England, where the most perfect example of the cabinet type of government is found, legislation and administration are united in the same hands, political control is centered in the lower house where the battle rages. The House of Commons (*see*) is the one effective organization of the party and of the Government. The Cabinet (*see*), made up largely of members from the Commons and responsible to it alone, is both the party committee and the Government. Through the House of Commons the prime minister (*see*) appeals in the name of the party to the voting constituency which is the final source of power. As the American is consciously voting for a President when he casts his ballot for the presidential electors of his state, so the Englishman is choosing a prime minister and a Cabinet when he votes for the party member in his district. The voters bring in a new Cabinet by shifting the majority in the House from one party to the other (*see* Cabinet Government in England). In the hands of this Cabinet both legislative and executive power remains until the next general election or until the prime minister resigns. So long as a safe majority for the Government is returned, the same prime minister and Cabinet will continue to govern. Cabinet members are the best statesmen of the party and represent its various elements. They form a kind of self-appointed party committee which assumes, also, the responsibility of the state. Outside of the Cabinet are some half dozen other members of the ministry, men of conspicuous ability who are in line for promotion but have not yet reached Cabinet rank.

The leaders of the party out of power and their supporters also sit in Parliament and devote themselves to criticising the Government and discrediting its policy. They stand ready at the first sign of weakening to push their cause, and when the Government is forced to resign they will form a new Cabinet equally well equipped with the necessary knowledge and experience of government. "His Majesty's Opposition" (*see* Opposition) is as essential to the perfect working of the parliamentary system as is the Cabinet itself. The very arrangement of the House recognizes the essential dual party nature of this government. At the right of the speaker sit the members of Cabinet rank belonging to the House, on the Government bench, with the rest of the party members behind and on their right. Directly across the table, sit the leaders of the Opposition, the "shadow cabinet," with their supporters, ready to assume the weight of government whenever the people may call. The House of Commons in session is a joint meeting of the two great parties in which one party governs under the constant criticism of expert opponents. The king's speech, read at the opening of Parliament, is really the party platform of the Government against which the competing policy of the opposition is directed as a counter platform. These platforms are not formal documents, but, like many English political forms, are constantly being altered and amended. They are not separate from the daily policy and purpose of the party, which must either fulfil its promises or be discredited before the voters. The public follows eagerly the debates on leading party issues. Every utterance of a Cabinet member carries the weight of an official party declaration (for the Cabinet must be united in all its outward acts; otherwise party disaster would at once follow).

Conduct of Business.—Under the cabinet system all important bills of a public nature are introduced by the Cabinet, and are supported by a united ministry. On the floor of

each house each party recognizes its official leader of debate. The prime minister holds this position for the Government and the aspirant for that office leads the Opposition. Their words have peculiar weight as expressing the policy of the party. These positions of influence are won by successful statemanship which the party is bound to recognize. Continuous competition within the party keeps every statesman struggling to maintain his influence and to increase it by formulating acceptable policies and securing support for them from the voters. The English Cabinet and the "shadow cabinet" are not outside of the party organization of the legislative body as are the President and his Cabinet in America; they are the organization. The leaders are assisted in the control of their parties by party whips (*see*) who do not take part in debate, but whose services are invaluable, since they must keep party members informed of important divisions and compel their attendance when necessary. The whip also keeps the leaders informed as to any change of sentiment among party members and tries to hold wavering supporters in line. Whenever a strictly party division is taken the whips act as tellers.

As Mr. Lowell has shown in his careful study of party voting, the tendency in Parliament is toward more strict division on party lines while the sense of party pressure seems not to increase. The reason is found in the necessity of party voting under the present parliamentary system, since the tendency of democracy is to fix its eye only on the broad general issues that every voter can appreciate.

United States.—The separation of executive from legislative offices in the United States produces a radical difference in the relationship between the party and the legislative bodies. Fully one half of party interest centers in the President or the governor while the other half is divided between the two branches of the legislature. The President is more likely to be recognized as the leader of his party than is anyone else. The tendency is for him to exercise more and more control over legislation through his right to recommend legislation (Const. Art. II, Sec. iii). He may turn the whole force of the party strength to the support of his legislative policy by using the patronage to influence members of Congress, and he may formulate bills upon subjects of great popular interest and appeal to public opinion for approval of his measures. Although such action is criticised as an encroachment on the independent powers of the legislature, it is defended as the best practical means of securing united party action for the fulfillment of party pledges. The legislative caucus (*see*), either for one house or both together, furnishes a means of reaching a party decision, but it is not always satisfactory since it is too elaborate to be frequently resorted to and is liable to promote party division and aggravate faction.

House of Representatives.—In the House of Representatives the Speaker is the head of his party and the defeated candidate for the speakership leads the minority on the floor. A leader of debate upon the floor is also selected by the majority. The Speaker is expected to use his office to promote party legislation. His power has risen and fallen from time to time, but at its zenith he practically dictated all party legislation and the conduct of business. Either alone or with the assistance of a committee, he appointed all the committees of the house (*see*) in whose hands the real business of legislation rests. As a member *ex officio* of the committee on rules he helps to determine what business shall come before the house, who shall be recognized in debate, and how business shall proceed. His power is so strongly supported by the rest of the organization in Congress that little opportunity remains to the independent element of the party for resistance. Arbitrary as it may seem, some such centralization of power appears essential in so large a political body as is the house. The committee (*see*) system of conducting actual business has developed with the American legislature. The chairman of each committee and a majority of its members are of the dominant party and thus the party makes itself in a way responsible for the acts of the committee, while the minority is also given a chance to express its views. Most legislation is non-partisan and does not lead to party division either in committee or on the floor of the house; but when a bill deals with a question of party difference, such as the tariff, the committee may divide on strict party lines, and bring in a majority and a minority report. Such a report may be followed by a party debate and a party vote in the house, but the actual proportion of party votes in Congress is much smaller than that in the House of Commons, and it is likely to be very small except when some subject of strong party controversy is considered, then votes on all questions tend to become partisan. Most legislation is accepted simply on the recommendation of the committee, many members of the house being ignorant of the exact nature of bills offered. The leader of debate for each party must keep himself informed upon the course of business and advise his supporters how to vote on the various measures. If factions exist within the party each will have a recognized head. Of late years a tendency has developed toward the use of party whips after the English type. In some way the ordinary member must learn how to vote. He looks to his "bell-wether" for guidance whenever an unfamiliar bill comes up and with docility follows the leader when the "ayes and nays" are called.

Senate.—The Senate is organized into committees in much the same way as is the House,

and actual business is conducted in committee rooms. Since the president of the Senate is not a partisan officer the guidance of business is placed in the hands of a steering committee who arrange the course of legislation and determine when bills shall be considered. Although the distribution of patronage influences party action in the House to some extent, it is in the Senate that the patronage together with senatorial power over appointments most largely affects legislation (*see* COURTESY OF THE SENATE).

State Legislatures.—In general organization the state legislatures resemble one or other of the houses of Congress, with many variations. Either the speaker or a party committee organizes the house and attempts to control legislation. If party voting is less common in American than in English national assemblies, it is still more rare in state legislatures, because state issues are overshadowed by national issues and beyond the election of a Senator or the forcing of a congressional gerrymander few strictly party votes are taken. New York state is unique in its large number of party votes in the legislature, owing to the even balance of parties, the city *vs.* the country sentiment, and the really important businesses carried on by the state.

In a number of states, the legislature shows a tendency to split horizontally rather than vertically, separating in each party the manipulators of the machine from the inexperienced and uncorrupted new members. When such a condition exists the "bi-partisan" control in the hands of one boss replaces the corporation lobby. Attempts at purification of such legislatures fare ill unless a strong counter organization can be effected, or a reform governor backed by a strong public opinion can be elected to coerce the legislature.

See CAUCUS, LEGISLATIVE, FOR LEGISLATION; CONGRESSIONAL GOVERNMENT; INSURGENTS IN CONGRESS; LOBBY; MACHINE, POLITICAL; OPPOSITION; PARTY GOVERNMENT, COMPARATIVE; PARTY GOVERNMENT IN GREAT BRITAIN; WHIP, PARTY.

References: P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1907); A. L. Lowell, "Influence of Party Upon Legislation" in Am. Hist. Assoc., *Report*, 1901, I, 319–542, *Government of England* (1908), I, ch. xxv; J. Macy, *English Constitution* (1896), 27, 28; J. A. Woodburn, *Am. Republic* (1903), 270–315; J. A. Smith, *Spirit of Am. Government* (1907), 192–202; F. Hichborn, *Story of Calif. Legislature of 1909* (1909), chs. i-iv, xxviii; J. Bryce, *Am. Commonwealth* (4th ed., 1910), 1, 157–208, 545–561; M. Ostorgorski, *Democracy and Party System* (1910), 369–375, 386; W. Wilson, *Congr. Government* (12th ed., 1896), chs. ii–iv; R. M. La Follette, "*Autobiography*" in *Am. Magazine*, LXXII (1911–1912), 661–674, *et seq.*; C. A. Beard, *Readings in Am. Government and Politics* (1911), 247–253; C. L. Jones, *Readings on Parties and Elections* (1912), chs. ii, vii.

JESSE MACY.

PARTY ORGANIZATION IN MASSACHUSETTS. Characteristics.—The element of personality may well be considered as the leading factor in the political history of Massachusetts. A series of great men, dominated by and drawing their power from great ideas, has embodied the life of the state. This element of individual, personal leadership which has existed in all lines of activity, in literature, in theology and in ethics as well as in politics, appears in both local affairs and state policy. The Puritan idea glorifies the individual and lays responsibility upon him. The forms of local government developed in New England have fostered this tendency. The town meeting, with its free discussion of men and measures, is composed of a group of men who are quite as much interested in the personal qualifications of the candidates coming before them as they are in the parties that appeal for support. Men trained in the town meeting system of local government tend to carry over to their consideration of state and national politics an attitude of mind which minimizes the party as an organization and exalts the men who represent it. Party organization in Massachusetts is, therefore, in striking contrast to that in states where the more impersonal county system has centralized public attention on measures and organizations rather than on men.

Everywhere a tendency has appeared to subject legitimate party organization to the domination of a machine which operates rather in the interest of a boss or a ring than in that of the people. Such a tendency has shown itself in Boston and elsewhere in Massachusetts, as in other places, but it has been repeatedly checked by the real, personal interest which the mass of citizens in the state continue to take in politics. A machine thrives on popular indifference; when all candidates are subjected to personal scrutiny and are held personally responsible for fulfilling the public will, it can never gain an absolute control. The citizens of Massachusetts have a machine, but they recognize it and are determined to weaken its power for harm. This determination has led to a series of laws intended to regulate party action and to minimize the opportunities for corruption in politics. Consequently Massachusetts gives a large amount of statutory recognition to party organization. Legal recognition has been adopted because it appeared to be the best means of stripping the machine of power, not because it would strengthen legitimate party organization. "The two leading parties" are made practically identical in form.

Legal Regulations.—Since Massachusetts is a state in which annual elections are held, the important party committees are also cho-

sen annually. The state central committee must have one member elected from each of the forty state senatorial districts. These members are chosen at the senatorial district conventions, except in Suffolk county where the city of Boston is situated. Here the member of the state central committee is chosen at the party caucus or primary election at which the candidate for state senator is elected. In the Democratic party fifteen members are added to the state central committee by the last preceding state convention. Definite laws are laid down for the time and manner of organizing the state central committee. In the same manner state law requires that "each political party shall in every ward and town annually elect a committee, to be called a ward or town committee, to consist of not less than three persons." Their terms of office and date of organization are also specified. A city committee, also required, is composed of the ward committees of the city. Thus "the two leading parties," *viz.*, "the political parties which cast the highest and the next highest number of votes for governor at the preceding election," are required to organize. Any party which at the last annual election polled for governor at least three per cent of the entire vote may organize and receive recognition on the official ballots.

Other Party Machinery.—Other party committees, although not required by law, exist in the eight districts from which are elected the members of the executive council, in the forty senatorial districts, the fourteen congressional districts, and the counties. They exercise the merely formal functions of calling the district and county conventions and have no vital connection with state and town or ward committees. No intermediary exists between the state central committee and the local committee. This close connection between local and state party organization facilitates the carrying over to the larger area of the direct interest in the candidate and his pledges which have so largely influenced local politics in New England.

Party conventions fill a place of much importance in the political machinery of the state. All candidates for state office and most candidates for district office and county offices are nominated by them. These conventions are mostly a law unto themselves, but one or two matters are regulated by statute. Four days must intervene between the caucus for choosing delegates and the meeting of the convention; this latter must occur at least forty-eight hours before the date for filing nominations with the secretary of state. One fourth of the delegates at a district convention are given the right to demand a roll call for the nomination of a candidate, and detailed instructions are given for procedure in the case.

Primary Laws.—Local party organization is considerably influenced by recent primary legislation, beginning with the Joint Caucus or Primary Election Act of 1903. This act, mandatory for Boston and optional in other cities and towns, requires that all parties hold their caucuses or primary elections at the same time and place and under the same regular election officers. The ballots used are furnished by the city or town. The party connection of each voter is checked on the polling list; participation in a party caucus is taken as *prima facie* evidence of party membership, which thus becomes a matter of public record. To change his party ties a voter must notify the keeper of the record at least ninety days before the date of the caucus in which he wishes to participate. This insistence upon the party membership might operate against good local government, if the law did not allow the formation of municipal parties on local issues and the supporting of independent candidates without loss of the right to share in the regular party caucuses. The desire has been to break down undue machine influence within the party and also to prevent corrupt combination between the baser elements of both parties. The system of primary elections provides for nomination by petition previous to the date of the primary. The act of 1909 again made sweeping changes in the election laws and city government of Boston. The whole system of city administration is changed. The mayor is elected for four years subject to a recall at the end of two, and a city council of nine is elected at large, three members every three years. The system of ward and precinct and city committees is abolished and all primary elections or caucuses are replaced by "nominating petitions to which at least five thousand names of registered voters must be attached." This act also is optional in other cities and towns, a number of which have accepted it (1912). The object of these and other legislative acts is clearly to strip power from party committees and conventions and primaries and to return it to the people. The machine is constantly thwarted by legislative restrictions.

Massachusetts and Pennsylvania.—Massachusetts thus, in striking contrast to Pennsylvania, presents the picture of a "safe" Republican state in which the party organization of both Republicans and Democrats is practically the same—regulated by state law. Here as in Pennsylvania one party has maintained almost continuous supremacy since the Civil War, but the party of opposition has never been so completely subservient nor so easily ignored as in the Keystone state. Massachusetts Democrats keep up an efficient organization and are occasionally able to capture the city of Boston or even the governorship. Since Massachusetts is usually Republican the highest political office to which any of its citizens can seriously aspire is that of United States Senator. In the Senate, as elsewhere, the typical personal element appears. Senators

from the Bay State are personal leaders, depending for their position and continued influence on their individual response to the will of the voters of the state, and their ability to mould and guide public opinion. They have never had machines back of them strong enough to secure them their positions in the face of real unpopularity at home. To judge from local political literature one might believe that the Massachusetts senatorial machine was far worse than that of Pennsylvania. Denunciation is vociferous and acrid, but the outcry itself reveals a more independent voting constituency than that in the latter state. Massachusetts independents not only know their power but they dare to use it. Nothing shows the fundamental contrast between these two states better than a glance at their senatorial leadership. Pennsylvania has always had but one Senator who is the machine. Massachusetts has always had two Senators of individual influence and of coördinate power owing their position as leaders to their political ability as men, not to their control of a smoothly running machine.

See Boss; Machine; Organization; Party Leadership; Party Organization in California; Party Organization in Pennsylvania; Party System in Sure States.

References: F. W. Dallinger, *Nominations for Elective Office* (1897), 173–195; G. Bradford, *Lessons of Popular Government* (1899); J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 93, 935; E. C. Meyer, *Nominating Systems* (1902), ch. ii; J. Macy, *Party Organization and Machinery* (1912), chs. xi, xii.

Jesse Macy.

PARTY ORGANIZATION IN PENNSYLVANIA. Boss System.—Pennsylvania is preeminently the state of a boss. From the United States Senate to the most insignificant country district a political organization has spread its ramifying branches. This machine has not been perfected without some struggles, nor has it maintained unbroken control in all parts of its territory; but on the whole, since the Civil War, Pennsylvania has been operated under the guidance of one man who holds the position of United States Senator from that commonwealth.

How the Machine Grew.—From 1860 the Republican party has claimed the support of Pennsylvania through its advocacy of a protective tariff. A state which was fast developing mines, railroads and manufacturing, in which the business corporation began to rule supreme, could scarcely fail to advocate a national policy so clearly favorable to its further progress. Republican control was strengthened also by the weakness of the opposing organization, for even the Democrats of the state favored protection, and repudiated, at a critical time, the national party policy of free trade. Thus the whole interest of all parties and classes in the commonwealth pointed in the same direction.

That such unanimity should play into the hands of political schemers was almost inevitable. Business men who had learned the value of the corporation system of organization with one man in virtual control naturally applied their business methods to party organization. Thus the boss gained power in state and city and once in control he perpetuated his position and made himself indispensable to the citizens who would not devote time and attention to political affairs. The cities of Philadelphia and Pittsburg were naturally the first fields for political manipulations. A compact organization could be developed, using the spoils of office as rewards for party service. Once a city was organized, the machine inevitably began to assert itself, corrupting officeholders, levying demands upon candidates and corporations, and finally shifting the whole business of politics from the hands of a people too busy to manage it into those of its own workers, who found personal profit therein. Valuable franchises were sold or given to favored companies. Election returns were falsified in various ways. Corruption spread from the cities to the country where at first the rewards of manipulation seemed less attractive. The system throve because the people were too busy making money and attending to what they considered their own affairs to watch their politicians.

Republican Organization.—The Pennsylvania method of handling the voter has been exceptionally successful. Formal organization is comprehended almost entirely in the state and county conventions and committees. The Republican state convention is called by the state committee. Inasmuch as representation is based upon the Republican vote cast at the preceding presidential election, allowing to each legislative district one delegate for each two thousand votes and one for each major fraction of that number, political leaders in cities like Philadelphia and Pittsburg, with a heavy Republican vote, have a special influence. This natural power is greatly increased by the practice of fraudulent voting and padding of the returns. The state committee is elected by the delegates from the fifty senatorial districts to the state convention. The permanent chairman of the state convention together with the candidates nominated by it choose the chairman of the state committee. Districts embracing only one county or an area within a county are entitled to two members on the committee; other senatorial districts have one member for each county. The chairman is also empowered to name twelve members-at-large, who shall have equal voice in party affairs with those chosen by the senatorial districts; hence the committee is clearly under the influence of the chairman. Obviously a committee of a hundred and twenty or more members cannot

do much actual work as a whole. It is the small nucleus around the chairman which is the real directing body.

The county, as the dominant factor in local government, is the basis of local political organization. Within the county considerable variety of form and method of procedure exists and the state committee does not pretend to dictate in county matters. This independence of party management in the counties has led to such diversity in the forms of county organization as to suggest that the managers encourage such variations in minor and unessential details as shall make it easier to confuse the voter and conceal the real power of the machine. All the county committees are large, sometimes as large as the state committee; and, so far as the conduct of ordinary business is concerned, it is the chairman in each case who is the active and efficient party agent.

Democratic Organization.—As before stated, the Democratic party in Pennsylvania has been weakened until it has been degraded to the position of an adjunct to the controlling Republican organization. The practical workings of the Democratic machine are governed, to a large extent, by the same industrial interests as control the Republican machine. In form, the Democratic organization, while based upon the county system of local government, is quite different from the Republican organ. Its system is apparently more centralized and rigid than is the other. The counties are subject to state control and the form of their political organization is dictated by the state convention. The state is divided into nine divisions which serve to group the counties and to furnish a basis for choosing committees of various grades. A very elaborate system of county, division, state executive and state contral committees with overlapping membership has been evolved; but, as in the Republican party, the real conduct of the campaign is in the hands of the chairman of the state central committee.

Through this system of organization true democracy with power in the hands of the people is apparently assured; actually, perfect dictation and control from the state committee result. The chairman of the state committee is in real command from top to bottom of the state machine. Even the organization of the opposing party is but one more wheel in the mechanism. One man rules the state. By means of the twelve members at large the chairman dominates his huge committee and is assured of a harmonious working corps. The party is managed by one man, like the successful business corporation whose board of directors merely gives force to his decisions. Before the public the chairman appears as this powerful administrator; but he almost always makes himself United States Senator and therefore has other absorbing duties. The actual work in the state is done by the secretary of the state committee who holds his position for many successive years. His hands are on all the wires of the machine and his skillful touch adjusts and regulates its action. Party work is distributed and assigned, not only to all committee members, state, county and local, but to thousands of private members as well. In the office of the secretary stands a carefully prepared catalogue of more than 800,000 Republican or potential Republican voters in the state. These names are classified as habitual and reliable supporters of the party ticket, doubtful or wavering supporters, and those accustomed to "fumble in the booth." The list also indicates persons who may be relied upon to do effective party work. Party supporters from Democratic families are indicated; and first voters or those soon to become voters are listed. The system of work followed is one of political education in which infinite care is expended on the young or the wavering Republican. The experience of years has demonstrated that it pays better to influence and then train the youth and reclaim the wanderer than to attempt to make new converts from hardened Democrats. One may, of course, win over an opponent for a single election, but he tends to return to the party in which he has been trained. The party worker has learned where to expend his best efforts and skill most economically. Repeated canvasses of the voters of the state are made during a presidential campaign. This means thorough, organized division of labor among a vast number of trusted party workers. When the machine is working at its highest efficiency every tenth or even every fifth man becomes a party watcher, whose especial duty it is to study his five or ten voters and learn the exact state of the feelings and sympathies of each, as well as the probable means of influencing any who seem disaffected or in open opposition to the party. During "off years" all of the machine parts are still kept in working order and grind out party loyalty to order.

Senatorial Leadership.—The political history of Pennsylvania for the last fifty years has been a history of its Senators. From the days of the elder Cameron to the present time one of the Senators has always ruled the state. He directs his subservient colleague as he does other officeholders. All federal patronage for Pennsylvania, including that of the great port of Philadelphia, is distributed through his hands. This one man machine has nearly always been able to claim and receive cordial and fairly united support from the state. Not only corporations and men who seek illicit legislative favors contribute liberally to the state campaign funds, but many rich, conservative business men who are honest in their purposes also give the machine hearty financial aid. The rank and file of the party, likewise, stand firmly for the machine which recognizes and

flatters each individual sheep in the fold. All of these classes and the thousands of office-holders and office-seekers look to the Senator as to their political leader, counsellor and friend.

Reforms.—There have been, nevertheless, a number of energetic uprisings of reformers and outraged citizens seeking to oust the machine and restore a high standard of civic honesty. Such a revolt led to the exposure of the famous Philadelphia "Gas Ring" in the eighties, and more recently to the reforms under Mayor Weaver and to the unveiling of the frauds incident to the building of the capitol at Harrisburg. Finally a general uprising of the voters led to a disruption of the Republican party, and to the defeat of the old organization in the election of 1912.

The laws passed in 1906 requiring statewide primaries, personal registration of voters and publication of campaign expenses have lessened the absolute control of the machine. It is generally conceded that the elections in Philadelphia, where the illegal vote was once estimated at from fifty to eighty thousand, are now honestly conducted. But real political freedom can result only from enthusiastic, independent organization as efficient for clean government as is the machine for dishonest government.

See Boss; Committees, Party; Organization, Party; Party Organization in California; Party Organization in Massachusetts; Party System in Doubtful States; Party System in Sure States.

References: E. C. Meyer, *Nominating Systems* (1902), ch. v; F. W. Dallinger, *Nominations for Elective Office* (1897), 175–189; J. Macy, *Party Organization and Machinery* (1912), chs. ix, x, xii; J. T. Marcosson, "Fall of the House of Quay" in *World's Work*, XI (1906), 7119–7124; W. MacVeagh; "Great Victory for Honest Politics" in *North Am. Review*, CLXXXII (1906), 1–18; "Reforms Secured in Pennsylvania" in *ibid*, CLXXXIII (1906), 590–601; C. R. Woodruff, "Practical Municipal Progress" in *Am. Journal of Sociology*, XII (1907), 190–215; C. A. Beard, *Am. Government and Pol.* (1910), 695, *Readings in Am. Government* (1910), 128; T. Baker, "Philadelphia, a Study in Pol. Psychology" in *Arena*, XXX (1903), 1–14; R. Blankenburg, "Forty Years in the Wilderness" in *Arena*, XXXIII, XXXIV (1905).

Jesse Macy.

PARTY ORGANIZATION IN THE SOUTH.

Personal Leadership.—In politics, as in other respects, the southern states present a peculiar group life. The institution of slavery, profoundly affecting the organization of society, tended to develop in the ruling class political leaders who owed their influence to family and personal ability. Because life was more individualistic and less highly organized than elsewhere, party organization was less formal, and personal leaders rather than committee rule dominated.

Republican Party in Border States.—Although most great men of the old South were slave-holders, many more whites above the "poor white" class were not. From them the southern Whig party drew its chief support. Largely from former Whigs, the Republican party, northern and anti-slavery in origin, was able to establish an organization in all of the border states and in Tennessee, which should be classed with them in political life. After the war it continued to be a factor in the political life of these former slave-holding states, to offer effective criticism of the party in power and to make more than a pretense of opposition. It was organized and operated as a white man's party. In these states the negro question, while affecting political life, did not destroy the dual party system. The term, "solid South," applies to all of the former slave-holding states, since they all support the Democratic party by large majorities; but only the ten ex-Confederate states (exclusive of Tennessee) present a seriously abnormal political life.

Historical Review.—When the Confederate states were reorganized they were at first nominally Republican, under an electorate composed of union whites, enfranchised negroes and "carpetbaggers." The former leaders of political life had been disfranchised. Democratic rise to power began in a period of rule by violence and intimidation. The Ku Klux (*see*) raiders terrorized negroes, and union whites and drove out the "carpetbaggers." Gradually, as the franchise was restored to the former leaders, the more intelligent and politically astute asserted their supremacy. This was the era of the tissue ballot and other methods of falsifying election returns. By various illegal devices the negro was, for a time, practically eliminated from politics.

Since about 1890 this system has been gradually replaced by legislative and constitutional enactments aimed at the negro voter. Restrictions of the franchise on the basis of property, education, ability to understand the Constitution when read, or the payment of a poll tax, have been administered in such a way as to exclude most negroes, white illiterates being admitted to vote by judicious application of these clauses and by the use of the so-called "grandfather clause" which prevents disqualification of a man whose ancestors had the right to vote in 1868. This course of action has been justified by appeal to the bugbear of negro supremacy. Probably the danger has been overestimated; certainly the remedy has worked great harm to these states. As Hart observes, "The cry of negro domination has been more unfortunate for the whites than for the blacks, because it has thrown the southern states out of their adjustment in national parties." Party government as well as real share in national

government has been sacrificed to this black fear.

Republican Organization.—In spite of having been hopelessly linked in common thought with a most unpopular reconstruction régime, the Republican party has succeeded in keeping up some sort of organization in all of the ex-Confederate states. Localities in almost every state continue to return Republican majorities, and a large aggregate number of white persons have remained in the national Republican party. Many more who vote the Democratic ticket would like to see normal party relations reëstablished. A portion of the party, dubbed "Lilywhite Republicans" (*see*), try to maintain it as a white man's party and scorn the help of negroes as much as do the Democrats; but their efforts to establish themselves in a position of influence seem futile against the momentum of the white man's party *par excellence*, the Democrats. The "Black-and-Tans" are an organization of both negroes and whites who would use the negro vote wherever it is cast in building up the Republican party. They do not meet with any remarkable success and the disfranchised negro seems less and less inclined to mingle in politics.

Serious efforts to develop the Republican party are greatly hampered by lack of organization and of funds. In practically all of the southern states the expenses of the campaign are met by the candidate. As the loss is heavy and the empty honor slight, worthy candidates are not easily found. The expenses of a primary are often prohibitive. Without strength enough to be effective the party continues to occupy the field and thus to prevent the rise of local state parties which otherwise might dispute the field with the Democrats.

In reference to the national organization of the party these southern Republicans are abnormal. The party appears to be maintained in some places merely to distribute federal patronage. Accused of being a party of federal office-holders, organized to distribute political plums, it is scorned and derided. On the other hand, delegates from these ten states to the national convention are as numerous and exercise as much influence as if their party were strong. They may choose a candidate for the nation and cast no electoral vote for him.

Democratic Organization.—Fear of negro domination has thrown full political power into the hands of the Democratic organization, the champion of white supremacy. Party division has become a matter of race rather than of conviction; appeals on principle and policy to a free voting constituency are denied. Whatever policy the Democratic machine may decide to follow, it is sure of its constituency. The party system has broken down; government has been transferred from the state to the Democratic party. This possession of almost absolute power within the state has led to abuses on the part of the machine until the individual voter has found himself powerless. That he had voluntarily placed his rights in the hands of the party committees does not alter the fact. He has become the slave of the machine, kept down by the clamor of politicians against any recognition of the negro. Party tyranny has used race fear for its own purposes.

Primaries.—In trying to restore some power to the citizen without allowing any of it to escape to the negro, southern voters have hit upon the primary election. The primary has grown up in the Democratic party, has been governed by party rules and in most states has been little regulated by statute. The details, consequently, vary from state to state, but the results are practically identical. Party membership is almost entirely a matter of party rules, which are administered by party officers. Various tests of membership are applied, but in some states the practical rule is to allow any white man to vote in the Democratic primary. This gives the first requisite —a popular *white* vote for local and state officers. Nomination at the primary is evidently equivalent to election, and the real contest is transferred from the nominal election to the primary. Political conflicts are carried on by factions within the one party. Candidates present themselves to the primaries on personal platforms, and all the excitement of a regular election with its caucuses and campaigns attends the primary. The expedient does well enough for local and state issues, but it does not allow close relations with national politics. All candidates for national offices are bound to support but one of the national parties. The system also brings a heavy financial burden upon the party—a burden usually met by the candidates. One compensation is that the opposing party can not as well afford a primary. In states where the law requires that a candidate be nominated at a primary election before his name can appear on the official ballot, only one set of names appears.

South Carolina Type.—South Carolina is a typical state under Democratic control. The real law-making body for the party is the Democratic state convention. It adopts a party constitution, designates the time of holding county and state conventions and provides for the election of county and state executive committees. Membership in a Democratic club is necessary for voting at a party primary. Any white voter may become a member by proving his party affiliation, but a negro is practically excluded by a rule which dates back to 1876. Candidates for nomination in the primary file with the party committee of the election area statements of their desire to run for certain offices. The expenses of the ensuing primary are met by assessment on the candidates, and if a majority vote is not obtained a second primary is held at least two weeks later. The

heavy burden of assessments tends to keep capable men of moderate means out of the conflict. Legal restrictions upon the primary are slight; party rules are elaborate and detailed. The Republicans organize under the law in a few counties, but they do not offer a state ticket to the voters. As might be expected, the vote at the Democratic primary is much heavier than that at the general election.

Mississippi Type.—Mississippi stands at the other extreme in reference to state supervision of primaries. The primary is optional, but when a party primary election is ordered by a party committee it must be conducted according to state law. The officers conducting the primary must fairly represent the different factions within the party, if such exist. Membership in the party, however, is determined by party rules. "General election laws are in force so far as applicable." The party county committee may, on petition of one-fifth of the members of the party, be elected; otherwise it is chosen "as the party may determine." This is to prevent the perpetuation of power by a machine or faction. The law also provides for minority and fractional representation in party conventions.

Solid South and the Democratic Party.—The relation of southern Democracy to the party in the rest of the nation is most unfortunate. The solid South, but especially the ten states whose political life we have under discussion, furnishes the majority of the Democratic voters in the nation. Upon these states the party relies for certain support in all national contests, yet the delegates from these states have not a corresponding influence in the national convention. Party strength at home spells party weakness in the nation. Whatever policy the rest of the Democratic party may espouse on national issues, southern Democracy must support it or perish politically. The numerical strength of their votes is weakened because, even though their candidate for nomination may be defeated, they are certain to support the successful candidate at the election.

See COMMITTEES, PARTY; NEGRO SUFFRAGE; PARTY ORGANIZATION IN MASSACHUSETTS; PARTY ORGANIZATION IN PENNSYLVANIA.

References: A. B. Hart, *The Southern South* (1910); J. Macy, *Party Organization* (1904), ch. xv; E. C. Meyer, *Nominating Systems* (1902), chs. iii, iv; H. W. Elson, *Hist. of U. S.* (1905), IV, 329–333; J. L. M. Curry, *The Southern States* (1894), chs. xv, xvi; T. N. Page, *The Negro, the Southerners' Problem* (1904), ch. x; Lake Mohonk Conference on Negro Question, *Reports* (1890–1891).

JESSE MACY.

PARTY ORGANS. A term denoting newspapers published in the interest of a political party; usually controlled by the party machine.

O. C. H.

PARTY, PLACE AND SIGNIFICANCE OF

Definition.—To define a political party is no easy task. Even a description presents difficulties. So complex is the modern party, so various are its qualities and duties, that it is difficult to be at once comprehensive and distinct in treatment. Certainly the old-time definition furnishes little enlightenment—a body of men associated together to attain a common end or united in opinion or design. Such a statement does not distinguish the political party from any other body of persons who find themselves in agreement upon some matters of common interest. It conveys no impression of the modern political association, which is officered, organized, and equipped for service in the body politic; it gives no idea of the unceasing activity, the official responsibility, the social character and permeating influence of the modern party. Instead of emphasizing the idea of agreement upon principle or public policy, any definition desiring to touch near the heart of the problem would necessarily dwell upon organization; it would bring out the fact that party's chief aim is to secure office and administer government; it would indicate that the party is charged with duty and responsibility to the public in the popular state; it would point to the fact that parties have governments and leaders; it would show that parties have life as well as principles and that they accept principles to prolong life. In short any definition of a political party must recognize that it is now a primal governmental institution.

Parties and Factions.—The party as seen in its most developed form in England and the United States is not much like the old-time factions, which, representing distinct class interest or economic bias, were intent upon the possession of influence in government to further their own ends. Those factions were based on the dualism or pluralism of the social life in which they worked. They were rooted in social opposition; they were often not only competitors but enemies. Though they might indulge in intrigue, chicanery and conspiracy, they can hardly be said to have had organization as that word is used today. A faction may be said to have principle; certainly it has purposes though they may be narrow and selfish. The modern political party, the product of modern effort to make popular government a reality, may be led by designing leaders and affected by selfish interests, but it has no higher or lower ostensible purpose

than to secure the good of the whole state. Moreover, as we shall see, though it has principles and purposes, it holds forth its claim to be entrusted with the management of the whole state for the public good.

Principles.—This quality of the modern party, this readiness to assume administrative responsibility and to serve the state, is not merely superficial. In the popular state mere faction is out of place; to the extent that it exists public opinion lacks force, unity, and wholeness. While it may be true that in a measure party represents classes, instincts, prejudices, interests, and tendencies, nevertheless, in a state whose self-consciousness is developed, legislation or political administration which is merely partial and selfish is dangerous to the stability and well being of party. Parties must adapt themselves, and they have adapted themselves, to the fact of political unity, to the substantial integrity of the community. As a consequence, in the truly popular state, principles in some measure sink into the background as the distinguishing marks of parties. Parties, seeking the support of the whole people and holding forth their trustworthiness as administrators of government, find it necessary to make comprehensive programs and to take seriously into account the desires of their opponents. Thus party principles tend to become similar, even though they may never become identical in character. It not infrequently happens that principles and doctrines of contending parties are so nearly the same that the controversy plainly narrows itself into a choice of leaders who are to be intrusted with the management of government.

Governmental Institution.—In what sense can it be said that a party is a governmental institution? In fact, in many senses. The very division of the people into great political armies that have officers, constitutions, history, *esprit de corps*, character, treasure, power, is an institutional or governmental fact of primal significance. The marshalling of the people to affect or control government is itself not merely a social phenomenon but a political fact; and the permanent system is an institution. It is, moreover, a constitutional institution, if we use the words to include the actual political structure of the people and not simply the structure described by a parchment we call the Constitution.

In a number of ways a political party as an institution serves or proposes to serve in the management of the popular state: it is a device for gathering desires of the people, formulating them and conveying them into government; it is also an arrangement for putting people into office, and in early days in this country practically all the machinery for this central duty was left to the voluntary associations that were slowly hardened into parties and can now be recognized as institutional systems. It charges itself with administrative responsibility; it undertakes the duty of holding office and managing the government; it establishes unity behind executive and legislative activity. Even in America where the principle of separation of powers (*see*) prevails, the party has done much to make executive and legislative departments work together.

That a party is an institution is perhaps more easily seen in England than in America. No one can doubt that the Cabinet in England is a political institution; and yet the Cabinet is only a band of political leaders who, by dint of their own inherent capacity, have become the head of the party and control the government. The head of the government and the head of the party is one; for the party is organized, or is seeking to be organized, in the government. When an English party is successful at the polls, it boldly takes possession of the government and proceeds to carry out its decisions openly; the party leaders for the time being direct the actual activity of the state. We sometimes have difficulty in realizing that these men are party leaders because they appear to be public officials. In America, on the other hand, we do not realize that men are in reality public officials because they appear to be party leaders. They may not be in office in the ordinary sense at all, for the party is organized outside of the government to control the government; though the party is anxious for office, there is no thorough concentration of official and party responsibility. And yet as the party has a government of its own with elaborate machinery, and as it exists to control what we call the government, we need not hesitate to recognize it as an institution. It is in fact an institution of tremendous vitality, energy and power.

The Problem of Democracy.—When the Fathers framed the Constitution in 1787, they had no conception of the place or function of parties in the popular state. To them parties appeared dangerous, for the term was synonymous with faction and implied bitterness, rivalry and unrest. The reason for this was that the men of the day had had no experience with what we know as parties; even England had not yet simplified her political system by fully recognizing the claim of party upon official place and responsibility. The men of the Federal Convention naturally believed that they would establish free government if they were careful to see that it was sufficiently checked and balanced and limited. And yet with all their care they left totally out of consideration the two tasks which time has shown to be the great problem of democracy: they did not provide for effective means of conveying popular desire into the government, or of choosing men to hold the offices. It is plain enough now that these are the very things that must be provided for. No matter what the forms, no matter what the checks and the balances (*see*), we do not have popular

government if these two essential and elementary functions are neglected. To the extent that popular will and popular choice of officials are interfered with by designing men, by inadequate machinery, by improper law, popular government fails of realization.

To voluntary associations, therefore, quite unknown to the law and quite foreign to the theory of our constitutional system, was left the great duty of collecting the will of the people and of providing machinery for elections in the popular state. Little by little as the days went by, these voluntary associations took form; they hardened into institutions; they developed governments of their own; they created traditions; they counted their officers by the tens of thousands. As they took form and substance they acquired character; they tended, like all organic things, to look after their own being; and it was not always easy for them to see, in considering their own needs, what were the needs and desires of the whole people. Men got into the habit of paying heed to party allegiance and listening to party demands instead of demanding that party carry forward their behests.

But of course the real power, or much of it, lay in the hands of the government of the party. That government almost from the beginning strove to rule not to obey. Its object was success. Its leaders may often have had principles; but their duty was not to carry more principles than enough to insure victory. This, therefore, became the great problem of democracy—to control these new institutions; these institutions which the written constitutions did not know; these institutions which were the natural product of the growing democracy and which inevitably tended to be undemocratic, to be dominant, not obedient. If the history of a popular state is the history of its effort to become and to remain in reality a popular state, then the history of the rise of parties, their growth in authority, the development of their governments, and the efforts to bring these governments under control is the central theme of the narrative. The downfall of King Caucus in 1824 (*see* CAUCUS; CONVENTION, POLITICAL) and the establishment of the convention system were the result of an effort to throw off superimposed government. The recent establishment of the direct primary (*see*) is for the same purpose. The need of a democracy, that would fain be a democracy, is to constitutionalize party organization, to make its management subject to the wishes of the party members as a whole.

Legalizing Parties.—Of recent tendencies in the history of parties in America none is more significant than the legalization of parties, the actual statutory recognition of party offices and machinery. Parties in the states have their own written constitutions; but statutes have been passed recognizing the party officers and "organization." On the one hand we see the movement to take nominations at least partly out of the hands of the party "organization" by establishing the direct primary; on the other, the movement distinctly to formulate the mechanism of the party and to give it legal recognition (*see* PRIMARY). The party has ceased to be a purely voluntary, extra-legal institution.

Government and Party Management.—The lack of unity in the American system, of which we have spoken before, the fact that office holders elected by the people are not also primarily party leaders—the absence, in other words, of concentrated responsibility—is a cause of distraction in American politics. The President, it is true, may be the real head of his party in the sense that he has large share in shaping its policy and dictating its tactics. But in fact nothing is more common in American politics than an open conflict between the President and the party managers; indeed it almost appears as if there were peace and unity only when the President follows the "organization," and is obedient to the party management outside of the government. That the President may force an issue on his party is well illustrated by the tariff message of Mr. Cleveland (Dec., 1887), and by the subsequent effort of his party to carry out his plans for tariff reduction. But the President is not always successful even if he be bold enough to frame an issue. Party leaders shun new doctrines; they generally look upon the President or a candidate for the presidency as a convenience or as a medium of success in the attainment of office, and not at all as a master with authority.

In the states of the Union this dualism, this separate existence of party and constitutional government, is often very clear. The state boss who leads the party councils, who is, one might almost say, the government, who is back of legislative enactment and executive activity, whose real approval is necessary to make any candidate for office "regular," is some times not a member of the state government at all. Under such circumstances, real independence on the part of the governor means conflict and discord. Even where there is no single state boss, the party "organization" is in general independent of the executive of the state. In recent days we have seen long and strenuous controversies between the officer whom the people have elected and the party leader who is self-appointed. Out of these controversies may conceivably arise a new unity in which the elected officials will be charged with the responsibilities of party management and policy. But such a result is now only a matter of speculation. The fact is that there is now a complexity, which makes it hard for the average voter to understand the facts and very difficult for the people to fix responsibility. Difficult as the tasks of democracy must be, they are rendered more difficult

by this maddening dualism and by the intricacies of the existing system.

Principles and Office.—From what has already been said it should be plain that a party is not primarily a mere association of persons who have like desires and who are intent upon carrying those purposes out by means of government. When parties are first formed, they have distinct principles; they are possessed of policies that account for their existence. But as the years go by doctrines become dim; policies are lost by the way; but the party has acquired coherence, character, social backing, traditions; it can rely upon pride, prejudice, inertia, instincts. It may therefore for a time live without principle, subsisting upon vague social and industrial tendencies and antagonisms. It is, however, likely to take up new principles for it needs principles to obtain office. It generally takes up a new principle with hesitation and with circumspection; but little by little it develops and renews its creed. It must be remembered that a party is a thing of real life and that it follows the instincts of its life. And this means, first, that it cannot safely take up new theories or policies with any eager haste; and second, inasmuch as its object is to induce people to intrust it with the tasks of administration, it must put forward such principles as will aid in getting office. Time and again in the last hundred years one or another of the great English or American parties has been seen looking for a principle. Any one wishing to understand parties must not forget that it is at least as much the party's duty to put men into office as to carry principles; and this would become clear if we should define a party—omitting for the moment all consideration of differing principles—as an institution which has developed in the popular state and is charged with the function of enabling the people to choose between candidates for office.

We, as the plain people, get such measure of self-government as we have by the fact that parties accept principles, partly, at least, to obtain office. Every body of men desiring a particular policy does not under our system organize a new party. If that were done, we should be in a mess and a flurry a good part of the time. On the contrary an existing party adopts a new principle or policy to get office. We make use—not of constantly re-forming and disappearing sets or elements—but of organized parties, thoroughly developed machines, with traditions, histories, and governments. Third parties have had short lives in America as a rule. If the demand for legislation actually represents a need of a large portion of the community, it is likely to be taken up by one of the two parties that have power and organization.

Party Characteristics.—It is sometimes said that, although one cannot trace a party in history by its adherence to a single body of principles, it can be traced by its essential qualities, its real character. There is probably more ground for this assertion in the case of English than of American parties. If the American people were divided by horizontal lines into classes representing differing interests, parties advocating those interests would be likely to emerge; but even then one party would be found filching the principles of its opponent in order to get votes and office. Possibly it may be said that the American parties have had continuing characters and qualities; that one is more idealistic than the other, more responsive to popular desires, more impressionable, more likely to respond to the wishes of the people, less in sympathy with business interests and with social sobriety and inactivity; the other stands for effective and systematic government, for order, system and the conservation of economic interests. Thus the Democratic party—assuming that there has been one party all the time—from Jefferson to Wilson has been, it is said, the party of idealism and popular hopefulness; its opponent has been conservative. There is considerable truth in these assertions; but they are mixed with some error. The Democratic party started doubtless as a party of idealism; but it did not always remain so. The Republican party started as a party of idealism representing a great popular upheaval against intrenched interests, and, though it did absorb some of the old Whig notions, it was at the beginning composed of the farmers and the great middle class of the North. But changes come in all parties; the party out of power reaches out for helpful issues, for popular support; the party in power, tends to become satisfied with existing conditions; its very success has had the effect of attracting the conservative elements of the community.

Party Funds.—As parties are certainly in one sense great governmental institutions, they need funds. In fact, however we may define them, they cannot do the great work they are charged with in the popular state without money. Thus party financing has been in the past and is today a serious undertaking. If parties and party managements are to be subject to popular control, there must be popular control of the sources of income. It is true of party managers as of other people that whence their treasure comes, there will their hearts be also. Mr. Bryce has said that the number of party agents in this country is so large that he can form no estimate of its size, "save that it must be counted by hundreds of thousands, inasmuch as it practically includes all office holders and most expectants of public office." But we must include, too, the great number of men employed as party workers who are not in office or planning to obtain office themselves. With these facts in mind, it is not an exaggeration probably to say, as Professor Ford has said, that the "machinery

of control in American government requires more people to tend and work it than all other political machinery in the rest of the civilized world." If we leave out of account all office-holders and their salaries, the expenditure of money is still enormous. In the past the cost has been met by voluntary subscriptions, by giving office to party workers to pay party debts (*see* SPOILS SYSTEM), by assessments on office holders, by contributions from those desiring governmental favor, by payments from those fearing interference. The problem of the present and the future is to devise methods of controlling party finances and to discover such reputable sources for funds that parties can work for public interest.

Constitutional Effect.—The political party has had great influence on the growth of our constitutional system. The party system, for example, necessitated the adoption of the Twelfth Amendment. It has, moreover, shaped the constitutional organization to the needs of its own being and accomplished this without actually changing the written document. The most open and obvious intent of the Constitution of the United States is to provide for a federal state, a composite state with a high degree of decentralization. But in the early years of the Constitution parties were formed, and they were national, not federal, parties. The federal organization of parties would have necessitated a series of parties, disassociated, one devoted to policies of the national government and intent on filling its offices; others taken up with the specific problems of their respective states. Though parties have in their make up, by their committees and their officers, recognized the existence of states, of counties and even wards, the parties are not local parties; state issues are largely subordinated to the needs of the national organization. National sentiment no doubt accounted in part for national parties, but by their very existence they promoted nationalism and gradually took the life out of federalism. A strange but enlightening paradox is this—that the party which, nominally at least, stood for local state's rights, whose principles were thought to be the principles of decentralization, should have developed into a national party of surprising vigor, which was itself a great institution of continental dimensions, and which by its very life made for nationalism. The Democratic party was a great national institution from 1801 to 1860; and when it split in the latter year, it was apparent that the formal legal Union under the law was in danger of disappearing.

The method provided by the Constitution for the election of Senators has been of special effect in transforming the federal state into a unitary state (Art. I, Sec. iii). And this again is paradoxical if not astonishing, for the Senate was constituted as it was by the framers of the Constitution partly to preserve the federal principle. But the predominant interests of the unitary party could not allow any such arrangement as this to stand in its way. Not only were Senators chosen from the states under the direction of the party leaders, but the choice of state legislators was determined by national party differences, because legislatures elected Senators. It was impossible to select a state government on state issues; the real separate life, the real self-determination of the individual commonwealth was largely destroyed even in its own internal political life. The whole effect of party history shows not only the vitality of parties, but also the comparative simplicity of nationalism and of unitary organization as compared with the complexity of federalism. It has illustrated the difficulty of maintaining the essential qualities of federalism under the collective influences of modern life.

Conservative Influence.—American parties have had great influence in giving stability, in overcoming tendencies to disintegration and mere individualism. When one considers the conditions of American life in the nineteenth century, the absence of tradition, the want of any inherited social régime, the general freedom from social restraint or pressure, one is led to realize the great solidifying and harmonizing force of political parties—the single, vital, social institution which could absorb the interest, enthusiasm and spirit of the whole nation. The stronger the organization, the greater the restraint upon individual caprice; for individualism and organization are mutually contradictory. In almost every other walk in life America has displayed individualism and diversity. Even industry, which in recent years has come under the sway of organization, was for a long time purely competitive; in religion we have sects that are numbered by the score; but native capacity for politics has enabled the American people to maintain two parties, and parties once fairly under way have helped to make and maintain an American people.

See BOSS; CAMPAIGN FUNDS; CAUCUS; COMMITTEES, PARTY; CONVENTION, POLITICAL; INDEPENDENT MOVEMENTS IN POLITICS; MACHINE, POLITICAL; NOMINATING SYSTEMS; ORGANIZATION; PARTY FINANCE; PARTY ORGANIZATION; PRIMARY, DIRECT; REFORM MOVEMENTS; TAMMANY; THIRD PARTIES.

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PARTY SYSTEM IN DOUBTFUL STATES

Party Activity.—The doubtful state is one in which the strength of the two leading parties is about equally matched. Here, as nowhere else in the country, do we find a complete exhibition of the dual-party system at work in the fullest detail. Here are balance of forces and a constant political struggle. Such states are our best agents for maintaining true party rule in opposition to the tendency toward boss rule. Wherever a state becomes politically "sure" the party system of government tends to break down in favor of the less democratic control by a political machine or boss. Such is the condition in Pennsylvania (*see* PARTY ORGANIZATION IN CALIFORNIA; IN PENNSYLVANIA). But where two parties really contend, two machines are in operation and greater public interest in politics is secured. Where one party is almost certain to keep the power in its own hands, the opposite machine limits itself to criticism and fault-finding; but where the outcome of every election is in doubt each party is fully organized, and the one out of office is ready with its corps of workers to step in and make good its claim to greater efficiency and power. This means better organization both in the administration of the state and in opposition to the party in power. More members of the party are engaged in active party work. Both parties perform their natural and important function as critics who watch over one another for evil. In such communities the public is better educated than in other parts of the country. Both machines watch the individual voter and the prospective voter. They furnish him with abundant party literature. Workers engage him in political discussion. Citizens of doubtful states are treated to a disproportionate amount of the most effective political debating that can be secured. Not only do the strong party workers of their own state devote much time and energy to their enlightenment, but national leaders also seek to influence them. As a result of all this educational work a larger precentage of voters than elsewhere actually exercise their franchise privileges and share in affairs of state.

Doubtful States and the Presidency.—Under our electoral system the real decision as to the presidency usually rests with a few states. Consequently in a presidential campaign the attention of the whole country is turned toward those doubtful states whose electoral vote is large enough to determine the result. Sometimes New York alone has turned the scale, and this state with Ohio and Indiana practically determines the fate of the nation. It follows, naturally, that these states are most frequently the home of aspirants to the presidency. Since the Civil War, with but two exceptions, every successful candidate for the chief magistracy has been a resident of one of these three states. General Grant was elected on the strength of his military reputation. The most persistent leader of the Democratic party in recent years, who comes from a politically unimportant state, has won attention by his personal powers. In general, however, the national parties select their candidates from uncertain areas where a strong and varied appeal on personal grounds can be made to all types of citizens. State and local pride, personal friendship and even less worthy motives are all relied upon to aid in swinging the vote toward the local candidate for national honor.

Senators from Doubtful States.—The aspirations of members of the party machine affects the status of Senators from their states. In a "sure" state the senatorship stands at the top of the political ladder. The man who has reached that position is likely to be returned again and again and to continue as the acknowledged leader of his party. In Pennsylvania, for instance, the head of the machine is one of the Senators, and so completely has he dominated his state that the Representatives have practically no voice in the distribution of federal patronage. But where the Senator is surrounded by men who are looking toward a higher position than his, he is constantly in danger of being forced to yield his position as leader to a governor who is a candidate for presidential nomination. In New York, for example, successful Senators who have controlled the state machine and distributed federal patronage have repeatedly been forced to yield precedence to a governor who has become a presidential candidate. These considerations affect only those doubtful states whose electoral vote is large enough to be of determining influence in the nation.

In all doubtful states the uncertainty of continued reëlection also tends to break down senatorial prestige and to force the Senator to take a prominent share in local politics. He must first suppress faction and dissension within his own party. The precarious situation of the party, in and of itself, tends to reduce faction and to produce a united organization. Upon this unity the Senator's seat depends. He must be active in all elections within the state, for in every state where members of the state senate are elected for a term of four years the safety of one of the national Senators is endangered in each legislative election.

The national congressional committee is much more closely in touch with doubtful states than with others, where, so far as the

committee is concerned, the election of congressmen rather goes by default. The congressional district is usually of much greater importance in a doubtful state organization than elsewhere. In Indiana, where the county committee is the chief political organ in smaller areas, the district committee, as such, has few duties; but the state central committee, composed of thirteen members, one for each congressional district, has command of the entire party campaign in the state. The member for each district acts as committeeman for his congressional candidate. Thus all party efforts are centralized in the one organization and are most efficiently managed. From all this it is clear that the fate of the doubtful state is closely bound to that of the nation as a whole and receives much more than its due share of public debate and interest. The great advantage of this situation is that the voter, here, really holds his normal power and is more able to exercise it with intelligence than is usually the case. One peculiar disadvantage of such a situation, which has appeared in all doubtful states, but especially in Indiana and Ohio, is the tendency to corrupt control through the purchase of votes.

New York as a Doubtful State.—A word should be added about the state of New York, which is apparently an exception to the statement that bossism does not flourish in a doubtful state. New York is peculiar in certain very important respects. Here the element of doubt arises from the existence of a vast Democratic city pitted against a powerful Republican state. New York also has a very much larger federal patronage to dispose of than has any other state. The city of New York is the center of corporate interests and corporate control for the entire nation. This condition spreads over into New Jersey, which shares in the power of New York over the corporations of the country. In Pennsylvania local corporate control is thorough-going and complete, and the party system is practically destroyed. In New York such control is more extensive but less thorough. Disruption arises from the fact that two party organs are maintained and real party battles commanding the attention of the entire country are fought. Here both the good and the bad qualities of party government are displayed. It is good to have a real contest for the power, but the use of the spoils of office as a weapon in the contest, and the influence of corporations tend to maintain corrupt political machines.

See BOSS AND BOSS SYSTEM OF PARTY ORGANIZATION; COMMITTEES, PARTY; MACHINE, POLITICAL; ORGANIZATION; PARTY ORGANIZATION IN MASSACHUSETTS; PARTY SYSTEM IN SURE STATES.

References: J. Macy, *Party Organization and Machinery* (2d ed., 1912), ch. xiii; M. Ostrogorski, *Democracy and the Party System* (1910), 155, 204, 221, *Democracy and the Organization of Political Parties* (1902), II, 307, 340, 344, 362; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 32. JESSE MACY.

PARTY SYSTEM IN EUROPE

Nature of Party System.—Political parties are as old as politics, but the party system, as the term is used by political scientists, is characteristic of modern representative institutions. A striking feature in the development of modern representative institutions has been the concomitant development of popular government. Yet representative government is not necessarily popular government. Representative institutions provide an opportunity for popular control of governmental activity. They do not in themselves supply that control. The individual voter under representative institutions is ineffective without organization. He can increase his effectiveness by combining with others for the purpose of concentrating their votes upon mutually acceptable candidates. The more comprehensive the combination, the more effective is the electoral power of the individuals associated together. A majority, acting together, can exercise the electoral power of the whole. A political party is simply a combination of voters for the purpose of influencing elections to public office, and the party system is the instrument by means of which representative institutions are made amenable to popular control. The party system has appeared in the various countries on the continent of Europe with the introduction of representative institutions, and it has developed with the progress of popular government. In Russia, where representative institutions are of recent growth, and the progress of popular government has been slight, the party system exists in a rudimentary and ineffective form. In Belgium, where representative institutions are of longer standing and an advanced stage in the progress of popular government has been reached, the party system is highly developed and vigorous. In all continental countries with the parliamentary form of government (*see* CABINET SYSTEM; MINISTERIAL RESPONSIBILITY), the party system plays an important part in the maintenance of working relations between the executive and legislative branches of government. In countries without ministerial responsibility to parliament, the party system is not relied upon to constitute the connecting link between Cabinet and country. France is the most familiar

illustration of the former type; the German Empire, of the latter. In general, the more popular the character of the representative institutions of a country, the more conspicuous is the participation of political parties in the conduct of affairs of state.

Importance of Party System.—The importance of the party system in a country depends not only upon the nature of its political institutions, but also upon the character of the work the parties are required to perform. Their chief functions everywhere are the selection of candidates for public office, and the formulation of political programs among which the people can indicate their preference by supporting the corresponding party candidates. Throughout the continent of Europe these tasks are much less heavy than in the United States. Elections are less frequent, and there are fewer offices to be filled by popular vote. Judicial offices are never filled by popular election, and executive offices only in the cantons of Switzerland. Elsewhere executive officers are selected by or on behalf of the dominant parliamentary parties or coalitions of groups, or are appointed without regard to partisan considerations by monarchical authority. In Switzerland, however, representative institutions have been modified by the establishment of procedure for direct legislation by the people, and the party system has been relieved of a portion of the burden placed upon it under a purely representative form of government. It continues to provide for the selection of candidates, but has surrendered in part its function of formulating political programs. Even in the most popularly governed of the continental European countries, therefore, the political importance of the party system is less than in the United States. On the other hand, restriction of the work of political parties within reasonable limits undoubtedly increases the effectiveness of the party as an instrument of popular government.

The effectiveness of party organization depends furthermore upon the number of parties. The most effective party system is that of two fairly matched parties, competing against one another for the support of a majority of the electorate. This is the traditional British system, but on the continent parties are more numerous. In France, the 597 members of the chamber of deputies chosen at the general election of May, 1910, were distributed among seven separate political organizations: *Réactionaires* (71), *Nationalistes* (17), *Progressistes* (62), *Républicains de gauche* (94), *Radicaux et radicaux-socialistes* (249), *Socialistes indépendants* (29), and *Socialistes unifiés* (75). In Germany, the distribution of the 397 members of the Reichstag, according to the official party lists published at the beginning of the twelfth legislative period (1907), was as follows: *Konservativen* (62), *Reichspartei* (25), *Deutsche Reformpartei* (6), *Wirtschaftliche Vereinigung* (19), *Zentrum* or Catholic party (105), *Polen* (20), *Nationalliberalen* (55), *Freisinnige Vereinigung* (14), *Freisinnige Volkspartei* (28), *Deutsche Volkspartei* (7), *Sozialdemokraten* (43), and Independent (13), making altogether a dozen different groups. In Russia, the elections to the third Duma resulted in the distribution of 439 deputies among no less than seventeen different groups. In general, the more numerous the groups, the less effective is the party system as an instrument of popular government.

Development of Party System.—Modern representative institutions were generally established on the continent of Europe in conscious imitation of British parliamentary government. It was not possible, however, by legal enactment to establish the two-party system, as required for the most successful operation of the cabinet system of government. Nowhere on the continent did two fairly matched parties spring immediately into existence. Continental Cabinets, therefore, have been compelled to seek support from coalitions of more or less inharmonious groups. In those continental countries in which the government of the day has been dependent for its existence upon the confidence of a majority of parliament, such as, for example, France and Italy, the effect of the subdivision of parties has been the instability of ministries. In such countries, the average duration of ministries has been short, and the conduct of affairs has been frequently marked by vacillation and weakness. In those countries, on the other hand, in which the executive has been less dependent upon legislative support, such as for example, Germany and Austria, the effect of the subdivision of parties has been the subordination of legislative authority. Government has been marked by a high degree of administrative efficiency and a low degree of popular control. The combination of a high degree of both administrative efficiency and popular control under a representative form of government seems possible only through the development of powerful party organizations as under the traditional British two-party system.

The subdivision of parties on the continent of Europe is practically recognized in the seating arrangements of the parliamentary chambers. The members of each group are seated together, the extreme conservatives at the right of the speaker, the extreme radicals at the left, the moderate groups scattered through the center. European parties are accordingly commonly referred to by the position they occupy in the chamber. Party management is largely vested in the parliamentary caucus. The Socialists alone are in the habit of holding delegate conventions, and even these confine their activity to the discussion of party programs and tactics. In general, platforms are promulgated by each parliamentary group on the eve of a fresh election.

The causes of the subdivision of parties on the continent of Europe are many and various. Some lie in the nature of the electorates. Many Germans, for example, are not yet reconciled to the establishment of the empire, just as many Frenchmen are not yet reconciled to the establishment of the republic. These irreconcilables, whether called Poles or Alsatians as in Germany, or Royalists or Imperialists as in France, persistently maintain their partisan independence, regardless of the theoretical advantages of the two-party system. In several countries peculiar relations between church and state have given rise to separate clerical parties, and in Europe generally the class consciousness of the different strata of society has stimulated the subdivision of parties. Other causes of the state of parties lie in the nature of the political machinery in use on the continent of Europe. The method of electing members of many continental parliaments, known as the ballottage, and the method of selecting committees through the instrumentality of legislative bureaus (*see*), both tend to impede the combination of minor groups into major political organizations. In Belgium and Sweden, and in parts of Germany and Austria, in Servia, and in several of the Swiss cantons the system of proportional representation directly encourages the subdivision of parties. In short, racial, religious, and social, as well as political, differences have led to the organization of numerous parties in European countries, and the continental alterations in the structure of parliamentary institutions have not been calculated to counteract the lack of homogeneity in the electorates.

Significance of Party System.—Political parties are instruments of government. Legal recognition might therefore be accorded to them, and even the test of party affiliation be legally defined. This has been done in many American states by legislation concerning primary elections. On the continent of Europe, however, the state has taken very little official notice of the organization and activity of political parties. Legislation authorizing the use of party designations on official ballots, establishing the party column, or regulating the conduct of primaries and conventions, is unknown in Europe. On the other hand, the recent introduction of proportional representation (*see* MINORITY REPRESENTATION) denotes a growing recognition of the significance of the party system. Indeed, the ballottage or second ballot for the choice of popular representatives when no candidate receives a majority at the first ballot, is substantially an official nominating system, and subserves the same purpose as a delegate convention or primary election in securing the concentration of likeminded voters upon the most available candidate. Thus in effect one of the functions of the political party is partially assumed by the state in many continental countries. The main purpose of the party system, however, is to enable the people to make the most effective use of representative institutions. The correct relation between democracy and the organization of political parties is well understood on the continent of Europe, and the most significant indication of the rising tide of democracy in Europe today is the increasing effectiveness of the party system.

Organization or Management of Parties.—Party organization on the continent of Europe is as various as the character of the parties. The aristocratic parties possess aristocratic organizations; the democratic parties, democratic organizations. But nowhere on the continent of Europe is party organization as elaborate or as comprehensive as in the United States. The national or state delegate convention for the purpose of nominating candidates is unnecessary, because there are no candidates to be elected by nation or state at large. The only candidates to be nominated, as a rule, are members of legislative bodies chosen in compact single-member districts. Such candidates are always adopted, as the phrase goes, by the district party club, if the party be an aristocratic one, or at a primary held in the form of a mass meeting of the party members, if the party be a democratic one. In either case, the candidate may be, and frequently is, suggested upon application from the local leaders by the central party organization. The practice of requiring condidates to be residents of their districts is unknown. The central organization consists primarily of what Americans would call the party caucus of the party members of the Parliament or Reichstag or national legislature, whatsoever it may be called. This caucus elects a permanent organization, consisting of an executive committee, which organizes by selecting a chairman and other appropriate officers. This committee usually maintains permanent headquarters at the capital, employs a paid secretary, handles the party funds, controls the policy of the party press, determines the attitude of the party towards the issues of the day as formulated by the government in office, calls meetings of the caucus, and in general conducts the party's affairs. Some parties hold annual congresses, at which questions of party policy or tactics are discussed by delegates of the district clubs together with the members of the party caucus, but in general continental European parties are managed mainly from headquarters, the local workers being content to follow where the leaders lead. The most elaborate and comprehensive party organization in Europe is that of the German Social Democrats. This party has an annual congress, a thorough system of party enrolment and of regular dues, subject to publicity of receipts and expenditures, a well-regulated press, and a well-developed publicity office. It systematically edu-

cates its members, and even provides them with socialistic entertainment as well as instruction. In 1911, the party reported an enrollment of 836,562 members, and local organizations in 383 of the 397 Reichstag districts. It owned 81 newspapers, and one comic weekly with 307,000 subscribers. The total income of the party during the year was $339,440.

See PARTY GOVERNMENT, COMPARATIVE; PARTY GOVERNMENT IN GREAT BRITAIN; PARTY ORGANIZATION; PARTY, PLACE AND SIGNIFICANCE OF; SUFFRAGE IN EUROPEAN COUNTRIES.

References: L. Dupriez, *Les Ministres dans les Principaux Pays d'Europe et d'Amerique* (1892–1893); A. L. Lowell, *Government and Parties in Continental Europe* (1896); "The Latest Age," in *Cambridge Modern History*, XII (1910).

A. N. HOLCOMBE.

PARTY SYSTEM IN SURE STATES. The meaning of "sure state" is government by one political organization. There are, besides the southern states where the race question has rendered politics abnormal, a number of states which may be counted as "sure" or "safe" for one party or the other. Such states exhibit almost all grades of organization between two types which may conveniently be termed the Pennsylvania type and the Iowa type.

Machine Type.—To the former type belong such states as Pennsylvania and Rhode Island. In these commonwealths a fully developed machine is operated by a leader, or boss, who is in complete control. The machine is usually well subsidized by one or more corporations in whose interest it is "run," and there is frequently at least one large metropolitan area in which the peculiar opportunities of the city boss and the ward heeler are found. The opposite party has here been reduced to a mere adjunct, if not to an integral part, of the main machine which crushes all individual initiative and all effective revolt among the voters. The feeling is aroused, or rather dully admitted, that efforts to break the power of the machine will be vain and the state continues to return safe majorities at all elections. So long as no successful and permanent revolt is carried through, such a state remains "safe" in the political sense.

The other extreme in party management is represented by Iowa, Vermont or Maine, where the party of the minority may occasionally triumph but where the established preference is for one party. Here the machine is not unknown and may even have a large influence, but it nowhere dominates its constituents. The party majority is composed mainly of honest voters who believe in their party and vote from principle. Their superior numbers rather than their better organization tend to weaken the party of the opposition and to discourage its workers. In such states no large cities where an ignorant vote is massed furnish opportunity for a city boss strong enough to overshadow the state, and the state boss, if he exists, is far from being all powerful. Sure states exhibit all degrees of corruption and of subservience to boss rule. The presence of large cities tends to develop corruption, as do large corporations that depend on favorable legislation. Lack of normal conditions of party government stimulates the development of unworthy influences in the party machine. Such states make it clear that no one party should have continued power in a democracy. As party government declines factions begin to rise. Because one party comprises most of the voters of the state it must not be assumed that all are of one mind. Where the all-powerful fear of loss of party control is removed, rivalry for control of the machine is sure to grow. The primary then receives more general interest than the regular election which follows. The primary also tends still more to weaken the opposing party, for the members, feeling that their own organization is foredoomed to failure, are strongly tempted to express their preferences in the primaries of the other party.

Senatorial Leadership.—In the sure state senatorial control reaches its highest efficiency. Once assured of a seat in the Senate the politician is able to make his influence felt throughout his home state and to increase his power in the nation at large. He is acknowledged as a leader of his party and can develop a state-wide machine which will be able to crush all factions and to return a constant and sure majority. The average voter in a sure state finds his individual power much less than that of the citizen in a doubtful state. In order to make his voice heard he must belong to the dominant organization. If he is a machine man and willing to sink his individuality in the mass he may rise through its ranks to a position of power, but if he does not agree with the machine he is much less able here than elsewhere to make his opposition effective. The citizen who takes little interest in politics finds his natural indifference respected, for his uninstructed vote swells the machine majority. This does not mean that the machine ignores him; it does not. Constant and skillful herding keeps the machine supporters within the political fold; but he is kept like a sheep that is expected blindly to follow its leaders. No effort is made here as in the doubtful state to develop his knowledge of political affairs or to appeal to his individual judgment.

See BOSS AND THE BOSS SYSTEM OF PARTY ORGANIZATION; COMMITTEES, PARTY; DOUBTFUL STATES, PARTY SYSTEM IN; MACHINE, POLITICAL; PARTY ORGANIZATION IN CALIFORNIA; PARTY ORGANIZATION IN PENNSYLVANIA.

References: J. Macy, *Party Organization* (1904), chs. ix–xii, xiv, xviii; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 32 *et seq.*

JESSE MACY.

PASSENGERS' BAGGAGE, DUTIES ON. The collection of duties on the baggage of incoming passengers to the United States has for many years been a source of irritation in the administration of the customs law. Americans who make an occasional trip to Europe for the purpose of sight-seeing and bring back articles purchased abroad packed in trunks and usually of limited value, object to the annoying vexations of the examination of baggage as well as to the payment of duties. On the other hand consistency in the interest of a protective system demands that all goods of the same kind, whether brought as baggage or imported in cases by merchants, should pay the same tax. Under the tariff act of 1909 passengers might bring in free of duty wearing apparel, articles of personal adornment, toilet articles and similar personal effects purchased abroad appropriate for immediate personal use, not exceeding in value $100. Such exception, however, did not apply to articles designed for household use, souvenirs, or gifts; and it was because of this latter restriction applied to an enormous number of petty entries that the indignation of travelers was particularly aroused. The result was a demoralized popular sentiment in regard to smuggling. According to Secretary MacVeagh (1910) "cheating the Government, making false statements, and bribing officials was regarded as a joke"; and irregularities of the service made the Atlantic steamships "open runways" for professional smuggling. In 1909 a determined and partially successful effort was made to check the evil, especially by Collector Loeb of New York, and the duties collected at the ports of New York and Boston on passenger baggage increased in a single year from $470,000 to $1,800,000. The provisions of the tariff act of 1913 were more liberal, including household goods, gifts and souvenirs among the articles to be admitted free of duty under the exemption clause. See APPRAISAL OF IMPORTED GOODS FOR DUTIES; TARIFF ADMINISTRATION. Reference: *U. S. Finance Report*, 1910, 10–11. D. R. D.

PASSPORT. An official document establishing the identity of the person named. The United States passport requests that the person named be permitted "safely and freely to pass and in case of need" be given, "all lawful aid and protection." See CITIZENSHIP IN THE UNITED STATES; PROTECTION OF AMERICAN CITIZENS ABROAD; RUSSIA, DIPLOMATIC RELATION WITH. G. G. W.

PASTERS. A narrow strip of gummed paper bearing the name of a candidate, used to cover over and replace the name of a candidate on the regular party ticket, thus facilitating the voting of a "split" ticket. The practice was much in vogue before the advent of the Australian ballot. O. C. H.

PATENT OFFICE. Before the adoption of the national Constitution, giving to Congress the power "to promote the progress of science and the useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries" (Art. I, Sec. viii, ¶ 8), American patents were granted by the several states. Inventors have preferred the advantages of a national patent, and hence state offices have ceased to exist. The question as to whether the states could grant them has never been passed upon by the courts.

As now organized, the Patent Office consists of the commissioner of patents, an assistant commissioner of patents, a board of examiners and chief, and a large staff of examiners, clerks and attendants. There were 939 employees in the Patent Office in the year 1911, an increase of two-fifths over the number employed in 1899. The office is entirely supported by fees and the receipts have usually exceeded the expenditures. In 1911 the receipts from all sources amounted to $2,019,388.03, the expenditures to $1,953,689.91, the surplus for the year being $65,698.12. The total net surplus earnings of the Patent Office deposited in the treasury of the United States is now $7,063,925.76. The receipts for 1911 were 52 per cent greater than for 1899.

Until 1830 patents were granted upon application without investigation as to the novelty or utility of the invention, the patentee assuming the risk of having his grant nullified on proof that he was not the first inventor. During that time a total of 9,957 patents were issued. Then an act was passed providing that the commissioner of patents was to issue the grant only after thorough investigation. The investigations of the Patent Office are not conclusive in the face of subsequent proof of prior invention, hence the numerous infringement cases that arise in the courts. Up to and including the year 1911, the Patent Office issued a total of 1,023,051 patents (including the 9,957 issued prior to July 1, 1836). The total number of patents issued from the earliest period to December 31, 1911, by all the other foreign countries combined, totals 2,242,095, thus showing that the United States Patent Office issues about one-third of all the patents granted in the world. In 1911, the total number of applications was 69,121; 29,801 patents and letters patent for designs were issued to citizens of the United States, and 4,058 to citizens of foreign countries. The Patent Office keeps records not only of patents but also of designs (first authorized in 1842), trade marks (first authorized in 1870), labels (first authorized in 1874) and prints (first authorized in 1893).

The Patent Office issues weekly the *Official Gazette of the United States Patent Office*, a thick volume which contains descriptions of the patents granted and reissued, the designs

patented, the applications for registration of trade marks, the trade marks registered, the labels and prints registered, the commissioner's decisions, the important decisions of the courts, the adjudicated changes in the classification of patents, and "interference" notices. The Office keeps up a scientific library, the number of volumes therein now being about fifty thousand.

See INTERIOR, DEPARTMENT OF; MONOPOLIES; PATENTS.

References: Commissioner of Patents, *Annual Reports;* U. S. Patent Office, *Official Gazette;* J. A. Fairlie, *National Administration of the U. S.* (1905), 21, 71, 208–212.

CLYDE L. KING.

PATENTS. Origin.—Patents have developed from grants of monopolies made by the English Crown during the last part of the mediæval period. When opposition to these monopoly grants arose in the latter part of the sixteenth century, the law courts, in 1602, decided that monopolies were illegal except when granted for a reasonable time for a new invention or new trade. In 1623 Parliament confirmed this common law doctrine by a statute expressly forbidding all grants of monopoly except "letters patent and grants of privilege—of the sole working or making of any manner of new manufacture within this realm to the first, true inventors." The theory of the patent law resembles that of the contract (the public agreeing, in consideration of the inventor's reporting his invention, that what is new and useful shall become his vested right and property for a certain time), and patent rights rest upon express statutes and are not common law rights.

Issuance.—Patents are granted in the United States for a term of seventeen years. Not everything new is an invention, nor is every invention patentable. By the present statute (R. S. 4886) patents are granted for the following:

> For any new and useful art, machine, manufacture or composition of matter, or any new and useful improvements thereof, not known or used by others in this country, before his (the patentee's) invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his (the patentee's) invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application unless the same has proved to have been abandoned.

The letters patent give to the patentee, his heirs or assigns, "the exclusive right to make, use and vend the invention or discovery throughout the United States and the territories thereof." The fees are fifteen dollars on filing each original application for a patent, and twenty dollars additional upon the issue of the patent.

In 1870 Congress authorized the issuance of patents for designs and the registration of trade marks. The term and fee for designs are ten dollars for a term of three years and six months, fifteen dollars for a term of seven years, and thirty dollars for a term of fourteen years. Trade marks are registered for a term of thirty years, the fee being twenty-five dollars.

International Status.—Patents may be issued to citizens of other countries as well as to citizens of the United States. But patents granted for inventions previously patented in a foreign country must expire at the same time as the foreign patent, and in no case to be in force over seventeen years. Applications for foreign patents to be valid must be filed within twelve months (designs—four months) after the filing of the application in a foreign country.

For the protection of patentees in all countries, the International Union for the Protection of Industrial Property holds decennial conferences and makes recommendations as to changes in the patent law. Until recently the laws of nearly all nations provided that patents of all patentees not nationals should be revoked unless the patentees manufactured or worked their patents in the nation passing the law within a given period, usually two to four years. This necessitated the duplication of manufacturing plants, etc., in each of the various countries. Through treaties with several countries, especially Germany, these clauses have been withdrawn. The conference of the International Union above named, held in Washington in 1911, agreed upon a treaty, which all the signatory powers were asked to ratify, in which it was specifically provided that the citizens of each of the contracting countries shall enjoy in each of the other countries of the Union all "the advantages which the respective laws now grant or may hereafter grant to the citizens of that country."

Legal Title.—If an inventor fears that some one else may apply for a patent on the same thing which he is working to perfect, he may file a "caveat" in the United States Patent Office. This entitles him, for one year, to notices of applications for patents on an interfering invention, thus giving him time to perfect his own. An "interference" is a judicial inquiry by the Patent Office between two rival inventors of the same thing for the purpose of ascertaining who is the prior inventor. Patents are reissued to remedy defects in the specifications.

In actions for infringements of patents, the defendant has to prove one or more of the following: (1) that the specifications filed by the patentee fraudulently contain less than the whole truth, or more than was necessary to produce the desired effect; or (2) that the patentee had surreptitiously or unjustly obtained his patent; (3) that the article had been previously patented or described; or (4) that the patentee was not the original

and first inventor or discoverer of any substantial part of the thing patented; (5) that the thing patented had been in public use or on sale in this country for more than two years before the application for a patent and it had not been abandoned by the public.

Patent law in the United States is in need of certain definite amendments. At present each circuit court of appeals has final jurisdiction over infringement suits and other questions pertaining to the validity of patents. In the past these decisions have frequently been opposed to each other. There is needed a single court of patent appeals to bring uniformity in the interpretation of the patent law. In the second place, greater stringency is needed as to the limit of time for completing applications (now one year), and as to the limit of time for answering final communications. Under the present statutes, the issue of a patent has been known to drag along for nearly seventeen years, thus practically doubling the period of time for which it was eventually granted. A third defect in the patent law, brought out by the famous Rotary Mimeograph case particularly, is that there is no limit to monopoly rights of the patentee who may vend upon condition that the purchaser shall buy or not buy articles perhaps unpatented. The public interests can no longer tolerate abuses of such monopoly rights. By act of 1912, Congress partially prohibited the practice. A scheme of compulsory licenses used in other countries has been recommended for adoption in the United States, whereby the inventor may be compelled to allow the public to make a reasonable use of his invention at reasonable prices. The decision (1913) of the Supreme Court holding that the patentee could not legally fix the price at which his article should be retailed by dealers, will go far towards preventing monopolies and manufacturers from escaping the penalties of the Sherman act under the guise of the exercise of patent rights.

See INTERIOR, DEPARTMENT OF; MANUFACTURING, RELATION OF GOVERNMENT TO; MONOPOLIES; PATENT OFFICE.

References: J. A. Fairlie, *National Administration of the U. S.* (1905), 208–212; W. C. Robinson, *Law of Patents* (1890); G. H. Knight, *The Situation and Its Lessons* (1891); U. S. Patent Office, *Official Gazette* (weekly).

CLYDE L. KING.

PATENTS TO LAND. The highest title to land in the United States is a grant or patent from the national or state government. Patents for national lands issue from the General Land Office, in the name of the United States, and are signed by, or for, the President and countersigned by the recorder. The form of the federal land patents varies, but a fee simple title is conferred subject to any specified reservations. In private land claims a patent only operates as a relinquishment of title on the part of the United States and does not preclude a judicial decision between claimants. Patents may be cancelled by the courts when procured by fraud. See LAND GRANTS; LAND OFFICE; PUBLIC LANDS. Reference: Thomas Donaldson, *Public Domain* (1884).

P. J. T.

PATERNALISM. A social theory advocating strict governmental supervision and management of the business and social affairs of a community; opposed to the *laissez faire* (*see*) principle.

K. F. G.

PATERSON, WILLIAM. William Paterson (1745–1806) was born at sea in 1745. He was admitted to the New Jersey bar in 1769. He sat in the state constitutional convention of 1776, and the same year became attorney general, which office he held until 1786. He was at the same time a member of the legislative council. In 1780–81 he was a delegate to the Continental Congress, and in 1787 a member of the Federal Convention and one of the signers of the Constitution. The so-called "New Jersey plan," virtually continuing the Confederation but adding the power to regulate commerce and raise revenue, was proposed by him. In 1789 he was chosen United States Senator, but resigned the following year. From 1791 to 1793 he was governor of New Jersey. In 1793 he was appointed an associate justice of the supreme court of the United States, which office he held until his death. A revision of the laws of New Jersey, prepared by him under the authority of the legislature, was published at Philadelphia in 1798–99. He died at Albany, N. Y., September 9, 1806. See SUPREME COURT. References: M. Farrand, *Records of the Federal Convention* (1911); H. L. Carson, *Supreme Court of the U. S.* (1891).

W. MACD.

PATHFINDER. A sobriquet bestowed upon John C. Fremont by his supporters in the campaign of 1856, in honor of his "path-finding" explorations in the region of the Rocky Mountains and beyond.

O. C. H.

PATRONAGE. How Dispensed.—The habit of regarding all offices, emoluments, contracts and pensions within the gift of the government as patronage to be dispensed by the party machine grows out of the spoils system (*see*). At first, while the patronage was comparatively small, the evils inherent in the system were evident only to a few statesmen; but since the Civil War they have become great enough to threaten serious disaster and to call for civil service reform (*see*) as a remedy.

The Constitution of the United States vested the right of appointment to office, except in special cases, in the President, his selections to be confirmed by the Senate (Art. II, Sec.

ii). Up to the time of the Civil War the President maintained actual as well as nominal control of appointments. But during and since that period the amount of patronage in the national government has vastly increased and the political manipulation of appointments has become exceedingly complex. Gradually virtual dictation as to certain offices has been acquired by the Senators. Senatorial courtesy (*see* COURTESY OF THE SENATE) secures to each Senator control over appointments in his own state. The Senate, by withholding ratification from appointments displeasing to any member, has at times forced the executive to recognize its claim to a share in the choice of appointees. Thus the Senate has secured some of the power formerly exercised by the executive. Some Senators (*see* PARTY ORGANIZATION IN PENNSYLVANIA) prefer to retain all patronage in their own hands, distributing it where, in their judgment, it "will do the most good." Others consult with their Representatives as to appointments in their several districts and as to those in districts where the opposite party is in power. The patronage for states that have no representation in Congress of the party in power is dispensed by the President and the party committees. The Republican use of this power in the southern states, where practically no effective party organization exists, reacts strongly on the national convention of that party. Although Congress has encroached upon the power of the President in respect to patronage, it cannot entirely destroy his control of governmental appointments. No Senator or party boss can actually make an appointment. In form, the initiative and the responsibility are still with the President. On the other hand, the fact that certain members of Congress came to be known as dispensers of patronage gave to the President a new and valuable means of influencing congressional action.

Presidents and Patronage.—President Lincoln quickly recognized the importance of such a relation between the legislative and executive departments of government, not only for uniting the party but also for forcing through desirable enactments. "He took pains to consult everyone who had any right to be heard; but controlled everything with a loose yet powerful rein." His use of patronage to secure the passage of the Thirteenth Amendment admirably shows the possibilities of such a weapon. The transfer of power over appointments from the executive to the Senate was effected chiefly during Grant's administration and was associated with various public scandals which strengthened the position of the agitators for reform of the civil service. Hayes was defeated in fifty-one of his ninety-two contests with the Senate over appointments—the largest proportion and the largest number recorded for any one administration; but, by making Carl Schurz Secretary of the Interior, he succeeded in removing from that department the element of reward for party service. In 1881 the contest between President and Senate was brought to a crisis by Garfield's struggle with the New York Senators, which resulted in their resignation and appeal to their state legislature for vindication. The emotional recoil from the spoils system following the President's assassination led to their defeat and marks the decline of the dictatorial power of the Senate. Since the repeal of the Tenure of Office Act the Senate is in the same legal position that it occupied in 1867, but "Senators continue unofficially and 'by courtesy' to be the main dispensers of patronage." In both his administrations Cleveland gave offense to his party supporters by his independence in making appointments. Both Harrison and McKinley used the patronage to secure legislation on the tariff question. The recent incident of the attempt of President Taft to influence legislation by withholding patronage from the "Insurgents" (*see*) and the President's own confession of its futility operated rather in favor than against the "insurgent faction" of his party. It shows, also, how the civil service reform has affected the popular attitude toward offices, even outside of the classified service.

State and Local Patronage.—In most states the amount of possible patronage is insufficient seriously to affect party organization. There are, in each state, a number of public institutions and commissions whose officers are appointed by the governor, with or without the coöperation of the legislature. Some states carry on extensive systems of public works, *e. g.*, the Erie Canal in New York. Fortunately education—except in the matter of building contracts, supplies, etc.—has usually been considered outside the domain of politics, and teachers have been chosen primarily with a view to fitness for their positions. Through the influence and coöperation of Senators federal patronage is often combined with that of state and city—the machine makes no distinction as to the source from which useful favors come.

In the field of state and local government the city furnishes the greatest display of the misuse of patronage, since elective officers are few and appointments numerous. Public works give employment to many contractors and laborers, especially where the municipality operates its own public utilities. There are, also, in large cities many federal appointees who, under the party system, are all chosen by or with the assent of the party boss. This combined federal and local patronage has been the largest contributing factor in building up the corrupt machine (*see*). The number of voters who get or expect to get employment in case of a party victory is so large that it tends to destroy true party balance. Largely because of the need of controlling this power

in cities several states have already enacted civil service laws intended to take most of the appointive offices out of politics.

Patronage and the Party System.—Because the party organization has been so largely subsidized by the patronage (*see* PARTY FINANCE) some writers affirm that our present party system cannot continue without this partisan use of the offices. That it is not indispensable to the party is shown in every state by the continued existence of the minority party unaided by the hope of patronage. The doubtful states where the expectation of favors may help both parties are comparatively few in number. Third parties also continue to exist without patronage. Instead of being the support of the party system, patronage tends rather to its destruction. Patronage is in fact a concealed form of bribery; the giving of office or contracts as reward for party service works insidious corruption of political morality. Unconsciously a large proportion of the voters come to regard offices as perquisites of the party, as gifts bestowed upon the faithful, rather than as positions of public trust. Horace Bushnell well observed that such a system "would corrupt a nation of angels." When corruption has entered through the spoils system it thrives and spreads to other methods of political influence.

An extensive patronage in the hands of one party tends to overthrow the entire system of political organization by keeping that party in permanent control of the government. Entrenched behind a wall of places filled by party supporters it can defy any party backed by mere principles to oust it. This is most clearly evident in some of the large cities, where the hope of federal and city patronage combined can almost alone be relied upon to maintain the party in power. But the party thus strengthened is, in reality, weakened by its false security. There are never spoils enough to "go round." The hungry outsiders are envious of those who fatten comfortably at the party crib, and the "ring" which controls the distribution of favors comes to be regarded with disapproval by the party members who receive little or nothing of the political largesse. Bitter factions grow up and their selfish strife rends the party asunder. The plain citizen, asking neither office nor other favors, comes to look upon all political activities, as mere pursuit of personal gain—elective as well as appointive office seeming also a part of the spoils controlled by the faction dominating the nominating machinery—and too often he retires in helpless disgust from all participation in public affairs.

The real purpose and end of a dual party system is to formulate diverse political views and present them to the people for choice. The party in office should have no better chance than its opponent to influence opinion or win votes. A sharp line of distinction should be preserved between those few offices whose incumbents are responsible for determining party policies and fulfilling party pledges, and those the sole business of whose incumbents it is to apply and carry out the party principles and policies. A change of parties should properly involve change only of the few political officers, leaving undisturbed the great body of administrative minor officials. Then the two parties would hold their rightful position before the voters, having equal standing and making equal appeal for support. This ideal is attained under the English cabinet system.

See APPOINTMENTS TO OFFICE; BOSS; CIVIL SERVICE; COURTESY OF THE SENATE; LOBBY; MACHINE, POLITICAL; PARTY FINANCE; SENATE; SPOILS SYSTEM.

References: J. G. Blaine, *Twenty Years of Congress* (1886), II, 267–274, 647–651; C. A. Dana, *Recollections of the Civil War* (1898), 174–177; C. A. Beard, *Am. Government and Politics* (1910), 189–193; C. R. Fish, *Civil Service and the Patronage* (1905), chs. viii–x; P. S. Reinsch, *Am. Legislatures* (1907), 29, 30, 86–91; L. G. Tyler, *Parties and Patronage in U. S.* (1891); G. W. Curtis, *Orations and Addresses* (1894), II; W. Wilson, *Congressional Gov.* (12th ed., 1896). JESSE MACY.

PATRONS OF HUSBANDRY. See GRANGERS.

PATRONS OF INDUSTRY. A name that has sometimes been applied to the Grangers (*see*) or the "Patrons of Husbandry." It may, also, be a misnomer for the "Sovereigns of Industry," an order which was organized in 1874, in Springfield, Massachusetts, under the leadership of William H. Earle, a fruit grower, of Worcester. Earle wished to establish an order whose membership might be more extensive than that of the "Patrons of Husbandry" (Farmers' Grange); so the "Sovereigns of Industry" provided for the admission of other industrial workers than farmers. The motto of the order was "coöperation," and it sought to resist the encroachments of monopolies and to secure a more equitable system of exchanges. A number of coöperative stores were established, but these through bad management or treachery failed financially. The last national council was held at Newark, N. J. in March, 1879, when the order was dissolved.

J. A. W.

PAUPER LABOR. The term pauper labor is applied to all work done at wages below those necessary to maintain the American standard of living, even though the laborer is not really a pauper. The protection of the American laborer against the competition of the products of pauper labor has been the leading argument for the protective tariff policy. No similar protection has been accorded against the coming of the "pauper laborer"

himself. Only those who are really paupers, and those coming under contract have hitherto been debarred by our immigration laws. See CONVICT LABOR; FREE TRADE AND PROTECTION; IMMIGRATION; TARIFF COMMISSIONS; TARIFF POLICY OF THE UNITED STATES. Reference: J. R. Commons, *Races and Immigrants* (1907), 155–59. J. R. C.

PAUPERISM. See DEFECTIVE CLASSES, PUBLIC CARE OF; OLD AGE PENSIONS; POVERTY AND POOR RELIEF; SOCIAL REFORM PROBLEMS.

PAVEMENTS. The word pavement is derived from the Latin word *pavimentum* meaning a "hard surface," a "floor rammed or beaten down."

Authority to Construct Pavements.—Authority to construct highways is usually granted by state constitutions or legislatures to corporations, municipalities, and commissions. Turnpike companies have found it economical not only to grade and surface their turnpikes, but also to protect portions of them with some form of durable pavement.

Municipalities are authorized to lay pavements on highways and in payment for the same are empowered to issue municipal bonds under certain restrictions; and to assess all or a part of the cost of the pavement upon real estate abutting on the highway.

State highway commissions have, in many states, within recent years, been authorized to construct state highways, using various forms of pavements; and in payment therefor the state uses its credit by issuing state bonds, usually running for ten to thirty years.

Pavement Assessments.—The practice regarding the assessment of cost of pavements varies widely. In many localities, especially in the central and western states, some portion or all of the cost is assessed directly on the abutting real estate. In others the entire cost is assumed by the municipality, the pavement being considered a "general public benefit." In the issue of bonds, the time within which the bonds shall mature and be paid should not be more than the probable life of the pavement for which the bonds are issued.

Paving of Street Railway Tracks.—It is practically universal to require the street railway companies having tracks in the streets to fill with an approved type of pavement the space between the rails of the tracks, in many instances, also a space from one to two feet in width just outside the rails.

Construction and Maintenance.—A great variety of practice exists in the methods employed in the physical construction and maintenance of pavements. A special executive officer of the municipality is usually put in charge of the construction of the streets and pavements. In some cities (as in St. Louis) all work of this character is done by contract. In others (as in Boston) only the new construction work is so contracted for; all repairs and maintenance work being done by day labor directly in the employ of the municipality. In others (as in Cambridge, Mass.) all the work is performed by day labor. This is the most expensive method; but the quality of the work obtained is most satisfactory.

Varying Demands on Pavements.—The present extensive use of the motor driven vehicle has brought about a radical change in the requirements for pavements, tending to eliminate the cheaper and less durable kinds. Consequently there is great demand for various types of coal-tar, asphalt, and petroleum oil products combined with cracked stone for augmenting the life and usefulness of the old forms of "Macadam" pavement, making it capable of extended use at moderate cost. In the better and more expensive grade of pavements a substantial base of concrete or other material and a smooth, impervious surface is more generally demanded. A few of the more important types of modern pavement are the following:

Stone Blocks.—(1) Belgian blocks—made of large sized blocks of trap rock—very durable, apt to be rough and noisy, to wear smooth and uneven. Their use is diminishing.

(2) Large sized granite blocks—extensively used in eastern states on streets having heavy traffic, very durable, very noisy, apt to wear with rounded faces and become uneven.

(3) Medina sand stone blocks—used extensively in the central states, fairly durable, somewhat noisy, do not wear smooth nor become slippery.

(4) Small sized granite blocks—usually laid on concrete base with joints grouted with cement or filled with pitch compound. Very durable, fairly smooth, not very noisy when well laid and grouted—a very satisfactory pavement.

(5) Small stone sets—used extensively in Germany (called "Kleinpflaster"), and in England (called "Durax"). The stone cubes or sets are very small, laid on a concrete base like a mosaic. Highly recommended by those who have seen it.

Brick Paving Blocks.—The first brick pavement in this country was laid in 1870. Since that time the use of vitrified brick blocks in certain sections of this country has enormously increased. When well laid, a brick pavement is fairly smooth, durable, easily cleaned, but is apt to be somewhat noisy.

Wood Blocks.—The first attempts to use wood as a paving material were largely failures. Inadequate foundation and imperfect preservative treatment caused early decay of the wood and disintegration of the pavement. At present the wood is first thoroughly sterilized and then impregnated with a preservative compound. When laid upon a concrete base the pavement is smooth, noiseless, sanitary, easily cleaned, but at times is somewhat slippery, especially in wet weather.

Asphalt.—(1) Sheet asphalt.—For many years this has been a very popular pavement and enormous areas have been laid in many of the larger cities of the country. The pavement is smooth, noiseless, sanitary, but slippery. Its durability varies greatly.

(2) Asphalt blocks.—The asphaltic compound is mixed with cracked stone and the blocks formed under heavy pressure. When laid on a concrete base, these blocks make an attractive pavement, but it has not proved durable for anything but light traffic.

Bitulithic.—This pavement is made by mixing a hot bituminous compound with a mineral aggregate carefully graded in sizes to produce a dense mixture. The pavement is smooth, noiseless, sanitary, not slippery and fairly durable.

Macadam or Cracked Stone.—In many of the states the abundance of good materials, ease of construction, and low first cost has made this class of pavement extremely popular. The use of a bituminous compound as a matrix or binder for the stone seems likely so to increase the life and usefulness of the pavement as to offset the increase in its cost.

See CITY ENGINEER; GOOD ROADS MOVEMENT; ROADS; STREETS.

References: W. P. Judson, *City Roads and Pavements Suited to Cities of Moderate Size* (1909); I. O. Baker, *Treatise on Roads and Pavements* (1908); A. T. Byrne, *Treatise on Highway Construction*, A (1907); G. W. Tillson, *Street Pavements and Paving Materials* (1903). L. M. HASTINGS.

PAWNSHOPS, MUNICIPAL. Municipal pawnshops date back several centuries. Nuremberg, a Bavarian town, claims to have introduced them into Germany in 1498. The privilege of carrying on pawnshops was conferred upon several other Bavarian towns in the eighteenth century (Munich, 1754).

In a great majority of the cities of Prussia of more than 50,000 inhabitants, the existing municipal pawnshops date back no further than the first half of the nineteenth century. It should be remembered that not all public pawnshops are municipal. For example, Berlin has no pawnshop under municipal authorities but there is a royal Prussian pawn office under control of the Royal Bank, established 1834. Throughout Germany one also finds private pawnshops which operate side by side with those under public control. In Austria the system is somewhat similar to that in Germany. It combines royal pawnshops with provincial and municipal pawnshops.

In no country are municipal pawnshops more highly developed than in France, and in no city does the institution bulk so large in public interest as in Paris, where it was founded as early as 1777. It is a distinct bureau of the municipal government and includes in its control three members of public charities, three private citizens and the prefect of police. There is a main office with a number of branches. It is an official monopoly; no other pawnshop is allowed to exist within the municipality. Municipal pawnshops in French provincial cities are managed by a small commission with the mayor as president, and representatives of the town council, the hospitals, the charity bureau, and, sometimes, the savings bank.

There are municipal pawnshops in all the large cities of Italy, Spain and Belgium; and there is considerable agitation for them in England.

In the United States the business has until recently been entirely in the hands of private pawnbrokers who do business under state regulations or municipal ordinances. Recently, philanthropic-commercial enterprises like the Provident Loan Society of New York, founded in 1894, have entered this field. Ohio has authorized municipalities within its borders to engage in the pawnbroking business. As yet no municipal pawnshops are operating in the United States.

See MUNICIPAL GOVERNMENT, FUNCTIONS OF.

References: W. H. Dawson, *Municipal Pawnshops* (1906), ch. xiii; U. S. Department of Commerce and Labor, *Bulletin No. 21* (1899); Massachusetts, *Labor Bulletin*, July-Aug., 1907, 41–45. F. D. WATSON.

PAYMASTER GENERAL. The Paymaster General is the head of the Paymaster General's department of the United States Army. The department is charged with the payment of officers, enlisted men, and all other persons in the military service. There is also a Paymaster General of the Navy. See OFFICERS, MILITARY AND NAVAL; SUPPLIES AND ACCOUNTS, BUREAU OF; WAR, DEPARTMENT OF.

References: Secretary of War, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 144. A. N. H.

PAYNE-ALDRICH TARIFF. This tariff was enacted August 5, 1909, so called after the names of the respective chairmen of the House committee on ways and means and the Senate finance committee. The Dingley Act of 1897 had become ill adjusted to existing industrial conditions. Moreover, there was an increasing animosity towards trusts, whose growth was believed by many to be fostered by the tariff. The national Republican platform of 1908 declared that, "The true principle of protection is best maintained by the imposition of such duties as will equal the difference between the cost of production at home and abroad together with a reasonable degree of profit." Although this cost of production principle had been implied in the platform of 1904 it was now more consistently stated, and was heralded as a solution for revising the tariff by a test approaching scientific accuracy. Mr. Taft, can-

didate for President, spoke in favor of "revision," generally understood downward.

The legislative outcome did not meet popular expectation, for while the the tariff of 1909 made some reductions and adjusted rates to current needs of manufacturers, it was, in the main, governed by the same fundamental principles which characterized the acts of 1890, 1894, 1897. Certainly the reductions were not sufficient to decrease the cost of living. The committee on ways and means, under the leadership of Mr. Payne, endeavored to make some comparisons of costs; extended hearings were held and a large amount of statistical data gathered. But, as in the preparation of former tariffs, special interests claimed and lobbied for special consideration. As before, the Senate exercised a dominating influence, its committee on finance holding sessions in private. The Senate made 847 amendments—for the most part upwards. In particular the House duties on iron, hides, coal, and lumber were increased. There was general agreement that specific duties as a check to undervaluation should be substituted for *ad valorem* duties wherever practicable.

When the bill reached the conference committee President Taft endeavored to exercise influence in behalf of lower rates. Hides were placed on the free list and the duties on coal and iron, leather and lumber, were reduced. In its final form the act carried advances on cotton and silk goods. On wool and woolens (Schedule K) there were but few minor changes, and it was here that the public expected radical revision. President Taft later declared that it was an unjust schedule. Popular suspicion was aroused and it was claimed that the act covered certain jokers, that is, clauses which by indirect and ambiguous phraseology made changes which, though apparently downward, were in reality upward.

There were, however, some reductions. The publishers won a fight for lower wood pulp and print paper, and it was made possible for American millers to use for domestic consumption the by-products of the manufacture of flour from Canadian wheat. Imports from the Philippines were treated with a more liberal spirit. In all there were numerous decreases in rates but many of them were for slight amounts or affected articles of little commercial importance (*see* TARIFF RATES). Of more importance was the abandonment of the principle of reciprocity (*see*) as provided in the act of 1897 and the introduction of maximum and minimum duties. To assist the President in determining when the maximum duties should be applied, authority was given for the establishment of a tariff board.

See ALDRICH, N. W.; and under TARIFF.

References: F. W. Taussig, *Tariff Hist. of the U. S.* (4th ed., 1910), 361–408, *Am. Year Book, 1910*, 34, *ibid, 1911*, 52.

DAVIS R. DEWEY.

PEACE, CONCLUSION OF. The conclusion of peace involves the termination of hostile relations between the belligerents, and puts an end to the status of neutrality on the part of other states. Prior to the conclusion of peace, hostilities may be suspended by an armistice, or truce.

In early days peace might be the result of the complete submission of one of the belligerents. Such peace was usually regarded as conquest. The conqueror then absorbed the territory and population of the conquered state; but peace through such conquest is not now common.

Sometimes peace results from the simple cessation of hostilities for a considerable period, with no evident intent to renew such action. The examples of this method in case of the wars between Spain and her South American colonies are numerous.

The termination of hostilities, may not, however, mark the conclusion of peace, for it is not always possible to determine at what time hostilities cease and sometimes hostilities in different sections of a country cease at different times. The two proclamations, more than four months apart, declaring the Civil War closed, specified the areas to which the proclamations applied. For civil war the conclusion of peace would usually be by proclamation.

The conclusion of peace is most commonly by treaty. Such treaties are frequently preceeded by protocols covering in a preliminary way the matters which treaties cover in a formal and more complete manner. The protocol of August 12, 1898, signed by the French Ambassador as representative of Spain, and by the American Secretary of State, on behalf of the United States, provided for:

(1) Relinquishment of title to Cuba; (2) cession of Porto Rico, etc.; (3) occupation of Manila; (4) evacuation by Spain; (5) appointment of peace commissioners; (6) suspension of hostilities as soon as notice could be given.

The treaty by which peace was concluded was not signed till December 10, 1898, after long deliberations by the commissioners appointed under the terms of the protocol. The treaty of peace was much more comprehensive than the protocol, as is evident from the titles of its articles: (1) relinquishment of Cuba; (2) cession of Porto Rico, Guam, etc.; (3) cession of Philippine Islands; (4) Spanish trade with the Philippines; (5) return of Spanish soldiers from Manila, evacuation of Philippines and Guam; (6) release of prisoners; (7) relinquishment of claims; (8) property relinquished and ceded; (9) property and civil rights of persons in ceded territory; (10) religious freedom; (11) legal rights in ceded or relinquished territory; (12) determination of pending judicial proceedings; (13) privileges of copyrights and patents reserved in

ceded territories; (14) consular privileges; (15) mutual privileges of shipping charges; (16) obligations of Cuba; (17) ratification.

Hostilities between Russia and Japan were not suspended during the negotiations looking to peace. Negotiations were formally begun at Portsmouth, New Hampshire, August 9, 1905, and concluded August 29. Hostilities were suspended September 1, in accord with the first article of the treaty which provides, "There shall henceforth be peace and amity between Their Majesties the Emperor of Japan and the Emperor of all the Russias and between their respective states and subjects."

The effect of the conclusion of peace is simply to put an end to the war. Many other questions must be settled either by treaty or tacitly on the principle of *uti possidetis* by which each party is to retain possession of what he has acquired by force during the war.

If a treaty of peace is negotiated it usually includes provisions: (1) terminating hostile relations; (2) settling causes of differences; (3) determining disposition of prisoners; (4) for settlement of claims; (5) confirming or renewing former treaties; (6) establishing boundaries, ceding territory, etc.

See ANNEXATION, DIPLOMATIC PRINCIPLES OF; ARBITRATION AND PEACE; CONQUEST, RIGHT OF; HAGUE TRIBUNAL; MEDIATION; NEGOTIATION OF TREATIES BY THE UNITED STATES; RATIFICATION OF TREATIES; WAR, INTERNATIONAL RELATIONS DURING.

References: G. G. Wilson, *Int. Law* (1910), 366–381; H. W. Halleck, *Int. Law* (1908), I, 328 *et seq;* L. Oppenheim, *Int. Law* (1912), II, 327 *et seq.* GEORGE G. WILSON.

PEACE DEMOCRATS. See ANTI-WAR DEMOCRATS; DEMOCRATIC PARTY.

PEACE MOVEMENT. See ARBITRATION AND PEACE.

PEACEMAKER. A sobriquet of Henry Clay, given him because of his exertions in behalf of compromise measures between the North and South, particularly the Missouri Compromise (*see*) and the Compromise of 1850 (*see*). See CLAY, HENRY. O. C. H.

PEANUT POLITICS. Political activities inspired by petty and personal motives rather than by deep political principles. O. C. H.

PEAR TREE, SHAKING OF. An expression used probably as early as 1885 to denote the distributing of the spoils of office by the newly elected official. O. C. H.

PEIRPONT GOVERNMENT. The name given to the "loyal state" government set up in Virginia in 1861, after the state had seceded. It elected Francis H. Peirpont governor, consented to the erection of West Virginia, had its seat at Alexandria during the war, framed a new constitution for the state in 1864, and was recognized by President Lincoln, in his reconstruction (*see*) attempts, as the true government of Virginia. See VIRGINIA; WEST VIRGINIA; RECONSTRUCTION. O. C. H.

PENAL LAWS. Laws imposing penalties (properly speaking in the nature of pecuniary fines, but commonly used as including all forms of punishment) for the commission of offenses of a public nature. The term is sometimes used to include statutes giving a private right of action against wrong-doers; but this use is inaccurate. Reference: Huntington *vs.* Attrill, 146 *U. S.* 657. H. M. B.

PENALTIES FOR CRIME. The social reaction against crime is popularly called penalty; and penalty is supposed to be pain inflicted for the protection of society or the reformation of the offender, or both. The word penalty is too narrow to cover modern practice.

Penalty as a Fact in Law.—Penalties are the sanctions of laws directed against crimes; they are pains or losses inflicted by authority in view of a deed which has been defined and condemned by that authority. Before a penalty can lawfully be inflicted the crime must be defined and the penalty made known. Crimes are classified in codes and manuals according to the social interest which is harmfully affected, as: crimes against public health, against the state or government, against order, decency, morality, property, person, life, reputation. An attempt is made to grade crimes according to their supposed gravity or "heinousness"—as felonies, misdemeanors and minor offenses against municipal ordinances and conventional regulations. The penalties are arranged on a scale of severity to correspond to the gravity of the delinquency. In this graduation of pains it is the act which is primarily considered; although the character of the malefactor has never been entirely ignored. The penalties are of various kinds; as reprimands, fines, restrictions of liberty without incarceration, loss of civil privileges and honors, incarceration, deportation (in some countries), bodily torture (as flogging), mutilation, death. The historic tendency is to unify and simplify penalties and reduce them to fines and imprisonment.

Undesirable Penalties.—It is generally acknowledged that the following penalties are to be rejected on principle: (1) Penalties which mutilate the body, reduce vitality or hasten death. In the best prison systems the medical profession is supreme in matters affecting health or integrity of the body, as diet, clothing, corporal punishment, confinement in special cells, surgery. The death penalty is excluded by this principle, because it destroys life. (2) All penalties which degrade character; the ordinary "jail sentence" is of this

class. (3) Penalties must be personal to the actual culprit. Indirectly all punishments hurt the family and friends; this is unavoidable, but should be mitigated as far as possible. Among acceptable penalties each form has some advantages.

Warnings and Probation.—If it were made possible to discipline normal youth and adults for minor offenses in civil courts, apart from criminal procedure, many non-criminal offenders could be sharply warned without acquiring a criminal record and helping to swell so-called criminal statistics, which often bring unmerited disgrace on a country. Reprimands of a judge have, usually, little effect. Suspension of sentence, without surveillance, is a sufficient lesson in the case of simple heedlessness; although the warning may be impressed by the requirement of indemnity to the injured party and costs for public expense. Apologies may not be sincere, and, therefore, are usually, considered useless. Fines, varying with the income of the offender, may be just, reasonable and effective penalties for persons of a non-criminal character, when their heedlessness borders on disregard of the interests of others. For those who are still young and who have begun to form vicious habits a discipline of probation, under careful surveillance of trained agents of the court, has been found wholesome.

Incarceration.—If the habit is fixed and the attitude defiant, more severe measures are needed. For the vagabond, confirmed inebriate, prostitutes and others who are morally incompetent, vicious, or dangerous to morality and order, neither the fine nor the short term of imprisonment is ordinarily of value. They need, and it is to the common interest to impose on them, a series of effective disciplinary and curative measures. Consecutive and continued treatment, adapted to the changing phases of conduct, has been found beneficial. The state farm colony, with shop trades, is an excellent form of organization.

All these persons, physically and morally depraved, require a prolonged medical and educational treatment, with a discipline of productive labor which will give them skill and industrious habits. The reformatory (intermediate) prison discipline is indicated for persons convicted of serious offenses who, for public protection, must be deprived of liberty for a series of months or years and who are presumably educable. Incarceration should not end abruptly with complete freedom, but should be followed by a period of liberty under supervision, with trained parole officers to visit them (*see* PAROLE SYSTEM). The period of discipline should be determined by the conduct of the prisoner and not fixed in advance. A state board of parole supervises the administration and may be given a judicial character. The more repressive penalty of imprisonment for habitual criminals should be longer; for rape and murder, it may be for life. If liberty is given it should be under a prolonged and well organized supervision by trained parole officers, until danger is passed (*see* INDETERMINATE SENTENCE). The short sentence of imprisonment, ten days to three months, is generally condemned as corrupting to the non-criminal offender and as lacking intimidating and reformatory value for habitual offenders.

Social Purpose of Penalty.—As a rule the motive of the community in inflicting punishment is not stated in modern legislation; we must look for it in treatises on the philosophy of law, in text writers, in decisions of judges, in speeches and discussions of lawmakers, but most of all, perhaps, in the newspapers and popular books which more directly mirror the real feelings of the people. The working motive of a community, that which actually creates and sustains criminal law and its penalties, is a problem for social psychology. The grave theories of political philosophers and judges frequently reveal only a small part of the total force. Analysis of social phenomena in this field will show that all the complicated motives which have ever, in the entire evolution of man, entered into the reaction against injurious acts, still have part in penalties; blind impulse of rage, organic reaction against what is hated or feared; personal revenge, family vengeance, and feud, mob madness; deliberate and conscious coöperation to uphold order, security, accepted standards of morality, character, religion, government. Doubtless the tendency is gradually to chain and discipline revenge and vengeance, and make dominant a calm and impersonal calculation of general interests.

Attempt to Measure out "Justice."—Men of all schools advocate some regulation of penalties and of all disciplinary measures, and demand that they should be "reasonable." This desire to give some kind of legal restriction to penalties arises from: (1) The necessity of protecting the individual. Any citizen, even the best, may at any time be an offender against some law or ordinance, and he needs protection against the caprice, the personal grudge, the arbitrariness of judges, juries and administrators. This lesson was learned in the hard school of absolutism, when the royal power made, interpreted and executed the law. It required centuries of political experience to establish the lines between the three coördinate branches of government. At present we are in less danger from arbitrary executive officers and courts, but the necessity for control by legislation still exists; (2) In order that each citizen may know in advance, as accurately as possible, what he may expect to meet, if he violates the law; (3) It has been asserted, in various phrase, that the penalty ought to be measured in accordance with "justice." It is customary, in our day, for those who make this demand to deny that they mean "vengeance" or "revenge." But the word "justice" is vague

and needs definition. Its measure is not learned by intuition and should not be fixed by mere tradition and imitation of bad copies. Probably many erudite jurists, all unconsciously, are themselves under the influence of inherited theological and metaphysical assumptions; for they are human. Even in abstract statements may lurk ancient notions about commutation of injuries, expiation of guilt in terms of money, with the corresponding fallacy that a prisoner who has served his term has "paid his debt" to society. Under the solemn phrases "respect for the dignity of offended law" and "care for juristic integrity" may be masked savage revenge; (4) Another reason for fixing the penalty, at least between maxima and minima, is found in the danger that a severe court may inflict unreasonably severe penalties, and a lenient court may be lax.

The actual measure of penalty is finally reached, under any system, by a study of the consequences of different degrees of severity. The problem of the future is to take this rough guess of empirical observation and transform it by scientific method into a reasoned calculation. The effect on public welfare is the only standard available. The necessity of establishing an accurate system of statistics of prisons, discharged prisoners, paroled men, etc., is obvious; for without reliable records, made by trained psychologists and physicians and covering a prolonged observation of all offenders, society will remain in the dark as to the actual effects of its repressive and reformatory measures. It would be safe to affirm that today we have no scientific data for measuring the actual effects of penalties; and yet these effects can be observed and approximately measured.

Failure of Attempts to Measure Penalties.—All legal authorities agree that penalties should be just, equal, reasonable, consistent, and in accordance with a definite scale. To what extent is this ideal attained? A comparative table of penalties used as sanctions in various European countries would show very wide differences, in spite of approximate equality in civilization. The length of sentence for murder, burglary, theft, assault, fraud, varies considerably. If any definite principle exists it does not seem to have been discovered by lawmakers. In the United States the divergence and contradiction are even more glaring, although all the states are closely related and are under one Constitution. The English law was the common starting point; the people are homogeneous in faith, morals, traditions, language, institutions. Yet the penalties are discordant and apparently measured without regard to any underlying principle.

The legislature has left the courts to fix the actual penalty in particular cases, within the limits established by law. The decisions of courts do not reveal any more consistency than the laws of the different states. It is evident from these facts that the length of sentences is fixed largely by guesswork and impulses.

It has been proposed to substitute for these measurements of the legislature another principle, that of the conduct of the offender, and his fitness for liberty, as determined by some administrative or judicial authority. But no state has yet ventured to accept this principle alone and without regard to other factors. Even if this idea could be realized it does not seem probable that the results would show much more equality or consistency than are shown under present conditions. Probably we are far from that calculus of social welfare which would give us any very exact measure of justice, and we must be satisfied with approximation to reasonableness and uniformity.

The guiding principle must combine all the factors in an effective system of social protection which shall include so far as possible, the reformation of the offender. The rigid lines of the ancient legal creed are already broken by criticism and experiment. The character of the criminal and his attitude to social interests are admitted alongside the repressive and deterrent considerations.

Some eminent advocates of the sacrosanct definitions of "penalty" now admit "surrogates" and "complements" of penalty. They still insist that "penalty" must be adjusted to guilt; while the same restriction of liberty or requirement of indemnity may be diminished or increased, as required by the character of the delinquent; only this must be done under another name, perhaps with another public organization. An adjustment must be formed by the acknowledgment on both sides that pains must be inflicted, both for preventing crime by intimidation and for reforming the criminal.

Improvement in the system of penalties may be hoped to come from: (1) a scientific study and record of the character and conduct of each convicted person by specialists in psychology; (2) a thorough and systematic study and record of the consequences of penalties in the convicts, in their families, in the community, by statisticians trained in this field; (3) a continuous expert supervision and direction of the life and work, especially of younger convicts, under competent educators; (4) a civil service merit system adapted to select, train, and keep in office professional reformatory and prison directors and their assistants, the tests being designed to secure not merely mechanical and business talents but power to influence human beings. Personality is the supreme factor under any system of law and administration. All mere shuffling of penal sanctions, and an improved prison architecture, has no significance or value whatsoever; (5) the administration of penalties inside the prison must be vitally connected with the after-care of convicts

until they have demonstrated their ability to walk alone without danger to public order; (6) most of all, fear of punishment, one of the feeblest of motives in the foundation of strong character, must not be expected to do the impossible; prevention is better than care.

See CAPITAL PUNISHMENT; CONVICT LABOR; CRUEL AND UNUSUAL PUNISHMENT; INDETERMINATE SENTENCE; LAW, CRIMINAL; PENITENTIARIES; REFORMATORIES; SUSPENDED SENTENCE; and under CRIMINAL; PRISON.

References: F. H. Wines, *Punishment and Reformation* (2d ed., 1910); K. Krohne, *Lehrbuch der Gefängniskunde* (1889); Paul Cuche, *Traité de Science et de Législation pénitentiares* (1905); F. von Holtzendorff and G. von Jagemann, *Handbuch des Gefängniswesens* (1888); C. R. Henderson, Ed., *Correction and Prevention* (1910); A. Prins, *Science pénale et Droit Positif* (1899); Ugo Conti, *La Pena e il Sistema penale de codice italiano* (1910).

CHARLES RICHMOND HENDERSON.

PENDLETON ACT. Drawn by Dorman P. Eaton, presented by Senator George H. Pendleton of Ohio, this act became law January 16, 1883. It provided for a Civil Service Commission (*see*), to establish and control a system of appointment to specified positions in the civil service, based on competitive examination. Extension of the system was left to the President. **Reference:** C. R. Fish, *Civil Service and the Patronage* (1905), 218–222.

C. R. F.

PENITENTIARIES. The term "penitentiary" which is synonymous with "state prison" is applied to convict prisons for adults. It does not include juvenile reformatories or reformatory prisons for young men and young women.

Solitary Confinement System.—The Eastern Penitentiary of Pennsylvania at Philadelphia was built on the solitary or separate plan. A separate cell about 8 by 12 feet was provided for each prisoner and the intention was to keep each prisoner separated from every other. This plan was at first adopted in the Western Penitentiary at Allegheny, Pa., but was soon abandoned there and it has now been practically abandoned at Philadelphia. No other American penitentiary was organized on the Philadelphia plan, but it was carried to Europe and is still is use in several European prisons.

Auburn System.—Most of the penitentiaries of the United States are organized on what is called the Auburn plan after the New York state penitentiary at Auburn. This plan provides for separate cellular confinement at night and congregate labor in shops or elsewhere by day. In most prisons on the Auburn plan prisoners are not allowed to converse or communicate with each other. In many penitentiaries prisoners were formerly fed in their cells but congregate dining rooms are now the general rule.

Construction.—In nearly all of the penitentiaries in the United States the cell houses are built on the block plan. There are two rows of cells back to back, carried up three, four or five stories, as desired. The front of each cell looks toward a corridor from 6 to 20 feet wide, lighted by large windows in the wall. In the more recent prisons the two rows of cells in each cell house are separated by a space of from 3 to 6 feet. In this space are placed the ventilating system, plumbing and the electric wiring. This method greatly promotes good ventilation and sanitation.

In recent years the cell block plan has been criticised because the cells are not sufficiently lighted. A plan has recently been proposed for a new form of cell block for a proposed penitentiary at Joliet, Ill. This plan provides for a cylindrical building with the cells against the outer wall in order to secure abundant light and air. In the center of the building will be a guard tower with an elevator, so arranged that the guard can see the entire interior of each cell without the knowledge of the prisoner. Cells will be supplied with large windows and the front of the cell toward the center will be composed of an open grating. The cells can be so arranged, if desired that no prisoner can see into the cell of any other prisoner.

The window bars and the lattice work of the cells may be composed of steel tubing containing compressed air with such arrangements that any perforation of the tubing, causing escape of air, will give an alarm indicating the location of the break.

Most of the penitentiaries of the United States have work shops designed for the employment of the convicts under such labor system as may be established by the legislature (*see* CONVICT LABOR). The cell buildings, administration buildings, hospitals, shops, etc., are usually located in a yard surrounded by a wall which is manned by armed guards except at times when convicts are locked up in their cells.

The administration of the prison is usually controlled either by a state prison commissioner, a board of state prison commissioners, directors or inspectors, or by a state board of control which administers other institutions. The head of the prison is the prison warden, who is usually appointed by the managing board. The position is one of great responsibility as the warden has authority similar to that of a sea captain. In case of outbreak or mutiny he has large discretionary powers. In state account prisons the warden has to administer a large business institution, with a large force of employees; and the reformatory methods and policy of the prison are mostly dependent upon his initiative.

Since 1880 there has been a great advance in the grade and efficiency of prison wardens.

The position has become a more stable one and has a recognized standing. In the most progressive states, when a good warden is secured he is kept in office indefinitely. There are several veteran prison officers who have been in prison service from 20 to 30 years and who are recognized authorities, not only with reference to the organization and administration of prisons but also on the general subject of penology.

See CONVICT LABOR; CRIMINAL, REFORMATION OF; CRIMINAL REGISTRY; GOOD BEHAVIOR OF PRISONERS; INDETERMINATE SENTENCE; PAROLE SYSTEM; PENALTIES FOR CRIME; PRISON LABOR; PRISON DISCIPLINE; PRISONERS, PROBATION OF; REFORMATORIES.

References: New York State Commission of Prisons, *Annual Reports* (1896 to date); Massachusetts Prison Commission, *Annual Reports;* C. R. Henderson, *Penal and Reformatory Institutions* (1910); U. S. Bureau of the Census, *Prisoners and Juvenile Delinquents in Institutions* (1904); F. H. Wines, *Punishment and Reformation* (1910); Penitentiaries and State Prisons, *Annual Reports* (for list see U. S. Census Volume "Prisoners and Juvenile Delinquents," 1904, 68 ff.); American Prison Assoc. (Formerly National Prison Association), *Reports* (1870 to date); H. M. Boies, *Science of Penology* (1901); Alexander Borkman, *Prison Memoirs of an Anarchist* (1912).

HASTINGS H. HART.

PENN, WILLIAM. William Penn was born in London, October 14, 1644, and died July 30, 1718. As a young man he adopted the Quaker belief and became active as a preacher and writer. In 1681, he was enabled to secure from King Charles II a grant of land comprising the present state of Pennsylvania. This territory he proceeded to use as a Quaker refuge and in 1682 he came to America to superintend personally the establishment of his "Frame of Government," which was the first constitution for the colony of Pennsylvania. In this he made no effort to enlarge his own prerogatives but sought rather to favor popular rights. Penn called, at once, a legislature consisting of an assembly and a council, both elective. In the distribution of powers between these two bodies and the governor, who had no powers independent of the council, his plans did not work out successfully. In 1683 he granted a new frame of government which further curtailed the powers of the governor. Owing to differences between the assembly and the council, Penn appointed five commissioners who were to constitute the executive power. In 1685, he again appointed one man as governor.

See COLONIAL GOVERNMENT, PROPRIETARY; PENNSYLVANIA.

References: S. M. Jenney, *Life of William Penn* (2d ed., 1832); Isaac Sharpless, *Quaker Experiment in Government* (1898); W. R. Shepherd, *Hist. of Proprietary Government in Pa.* (1896); George Hodges, *William Penn* (1901); William Penn, *Works* (ed. by A. V. Myers, in progress, 1912).

JAMES A. JAMES.

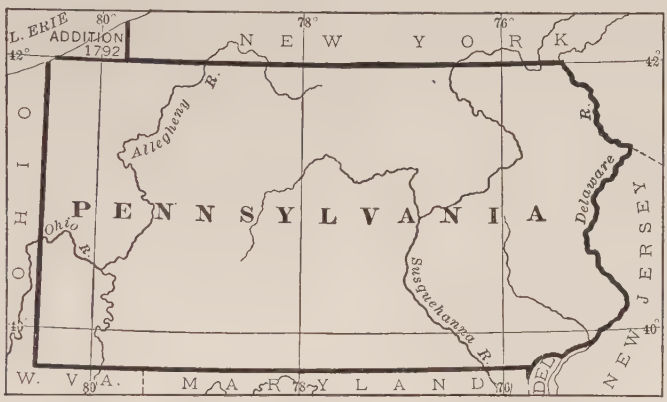
PENNSYLVANIA

Early History.—Pennsylvania, one of the original thirteen colonies, is known from its early geographical and later political position as the "Keystone" state. Its founder, William Penn, in payment of an old debt owing to his father, received a charter in 1681 from Charles II to all the land "bounded on the East by Delaware River—unto the three and fortieth degree of Northerne Latitude" and thence "to extend westwards five degrees in longitude"; then on the south from the Delaware River following a circle twelve miles around Newcastle "Westward unto the beginning of the fortieth degree of Northern Latitude, and then by a streight Line Westward to the Limitt of Longitude above mentioned." Controversies having arisen over the exact boundaries, the present southern limit of the state was determined in 1766–7 by two surveyors, Mason and Dixon (*see* MASON AND DIXON'S LINE), who ran a line at 39° 44′; and the northern limit in 1789 by agreement with New York at 42 degrees north latitude. For this province Penn was to deliver annually to the King at Windsor Castle two beaver skins and the fifth part of all gold and silver found in the province. As proprietor he was given full authority to establish a form of government by appointing whatever judges and magistrates he desired, and making whatever laws were necessary, subject however to approval by the home government. In 1701 he issued a charter of privileges which provided an annual assembly of four members from each county and guaranteed religious tolerance to all who believed in "One almighty God."

Penn and the Quakers who migrated with him to America extended their ideas of justice to the Indians, from whom they purchased the land and with whom they made a solemn treaty which was kept for many years. The attitude of Penn in an intolerant age brought to his colony a number of other peoples of widely differing nationalities and religion; the Welsh settled the Welsh Tract in 1682; the Germans under Francis Daniel Pastorius founded Germantown; the Mennonites, the Pietists, the Schwenkfelders and the Moravians,

settled mainly in the valleys of the Delaware and Schuylkill rivers. Finally came the Scotch Irish settling in the western part of the province.

Colonial Politics.—The widely differing variety of race among the settlers caused continuous dissension in political life and laid the foundation for an intense desire for local self-government and an antipathy to uniform control. The Quakers were peace-loving and refused to engage in warfare for any reason. In this policy they were usually followed by the Germans but were strenuously opposed by the Scotch Irish, to whom the Quaker policy of non-resistance did not appeal. Penn and his successors appointed Quakers as governors and councillors; the Quakers, although in a minority numerically, usually succeeded by manipulation in controlling the elective assembly; and both governors and assemblies steadfastly refused to appropriate money even for



Boundaries of the State of Pennsylvania, Showing Territorial Changes

defense and frequently blocked coöperation in the colonial wars. Their attitude was a source of constant annoyance to the militant Benjamin Franklin. Occasionally opposition to the peace-loving policy was successful, as when in 1756 the Quakers voluntarily withdrew as candidates for the assembly. Thereafter the aggressive party was in control, although the Quakers and Germans often either refused active military and financial support or gave it sparingly. This attitude continued even in the War of Independence and evoked criticism from the other colonies.

In September, 1774, the first Continental Congress assembled in Philadelphia because it was the most centrally located city in the colonies. After the battles of Lexington and Concord, the assembly of the province practically superseded the authority of the proprietor by the appointment of a committee of safety with Benjamin Franklin as its president. A convention for the purpose of framing a state constitution met July 11, 1776, and finished its labors September 28 following. The constitution was put in force by the convention and the state was organized under it March 4, 1777. The Articles of Confederation (*see*), adopted by the Continental Congress November 15, 1777, were ratified by the Pennsylvania assembly April 30, 1778. When this frame of government was superseded by the Constitution, Pennsylvania was the second of the states to ratify it by an assembly vote of 46 to 23.

Constitutions.—The state constitution adopted in 1776 provided for a supreme executive council, composed of twelve members, to act as the executive power, one-third of its members retiring each year. The legislature was composed of one house, called the general assembly, to be elected annually. The council and the assembly, sitting together, were to elect a president who, in conjunction with the council, had the power of appointing the attorney general, the judges, and other important state officials. Finally the constitution provided for a "council of censors," elected from the cities and counties every seven years, whose duty was to watch over the constitution and to see that officials lived up to it faithfully. The suffrage was given to all freemen over twenty-one years of age who were taxpayers, and who had been residents of the state for one year. This constitution was unpopular from the beginning; it was not submitted to the people for ratification and this fact together with its cumbersome provisions gave ample ground for ridicule to those who were now called anti-constitutionalists. Sentiment grew in their favor from year to year and a constitutional convention assembled in 1789. This convention framed the constitution of 1790 which was submitted to and approved by the people of the state. It provided for a governor, who should be elected for three years. He was given large powers in the appointment of state and local judges and other officials. The legislature consisted of two houses, a senate elected for four years, and a house of representatives chosen annually. The time of residence required for voting was extended to two years. Gradually there

grew up a demand for a more democratic frame of government, finally resulting in the draft of a third constitution which was ratified in 1838 by the narrow margin of 113,971 to 112,759 votes. The governor, who continued to be elected for three years, could not serve more than two terms in any nine years. The senatorial term was reduced to two years and most of the offices were made elective. All white freemen over twenty-one years of age, who had been residents of the state for one year, and had paid taxes within two years, were given the right of suffrage. The judiciary term, which had been held during good behavior, was reduced to fifteen years for the supreme court, ten years for presiding judges of lower courts, and five years for their associates. In 1850 an amendment to the constitution made the judiciary elective.

In his annual message to the legislature in 1871, Governor John W. Geary pointed out that too much time was consumed by the legislature in passing bills, and that the constitution was otherwise defective. A new constitutional convention met at Harrisburg and later at Philadelphia, and framed a new constitution which was ratified by popular vote December 16, 1873. This is the constitution under which the state is still working (1914). The term of the governor was again extended to four years, with the provision that he should not succeed himself. The office of lieutenant-governor was created. The governor appoints a secretary of the commonwealth, an attorney general, and a superintendent of public instruction. He has the right to veto any bill, but it may become a law over his veto by two-thirds vote of both houses of the legislature; he may also disapprove of any item in state appropriation bills. Biennial sessions of the legislature replace the annual sessions. The legislature is composed of a senate of fifty members, elected for four years, and a house of representatives elected for two years, both chosen from districts formed for this purpose. Special or local legislation of most kinds is specifically prohibited and, if not prohibited, is safeguarded by publicity requirements. The judiciary of the state consists of a supreme court of seven members, elected for twenty-one years and ineligible for reëlection, of a court of common pleas, oyer and terminer, of general jail delivery and subsidiary courts. On account of the pressure of business on the supreme court, the legislature on June 24, 1895, created an intermediate court, called the superior court, which is composed of seven men, elected for ten years. It has only appellate jurisdiction except in cases of habeas corpus, and final jurisdiction only in certain cases. Other state officials are elected by the people; the state treasurer for two years, the auditor general for three years, and the secretary of internal affairs for four years. County officers, such as sheriffs, coroners, treasurers, etc., are elected and hold office for three years. Every male citizen twenty-one years of age, who has been a citizen of the United States one month, a resident of the state for one year and of his election district for two months, and who has within two years paid a state or county tax, has the right to vote at all elections. However, by amendments to the constitution ratified in 1901, regulations in regard to registration of voters may be passed by the legislature, provided that regulations made for cities of the same class be made uniform. Such a law was passed in 1906 but it applies chiefly to cities of the first and second classes.

Political Parties.—The history of political parties in Pennsylvania has been peculiarly unvarying. The radical supporters of the constitution of 1776 naturally became Anti-Federalists or Democrats in 1790, and the makers of the constitution of 1790 easily found themselves on the Federalist side when national politics replaced state issues after the adoption of the United States constitution. Thomas Mifflin, elected by his personal popularity, was governor during two terms from 1790–1799. In 1799, Thomas McKean carried the state for the Anti-Federalists or Democrats and was reëlected during the two terms following. Pennsylvania thus became the "keystone" on which the Democratic party depended largely, but internal trouble soon arose and McKean was elected for a third time in 1805 as an independent moderate Democrat (1799–1808). The party was reorganized under the radical wing and elected Simon Snyder governor from 1808–1817. He was followed by William Findlay, Democrat, from 1817–1820. Internal dissensions again arose in the party, and the Federalists elected Joseph Hiester governor in 1820 by the narrow majority of 1,584 votes. In 1823 the Democrats immediately came into control again and J. Andrew Schulze was elected governor for two terms, 1823–1829. In the presidential election of 1824, Andrew Jackson received over three times the number of votes received by all other candidates, 36,100 to 11,337; but five years later George Wolf, Democrat, was elected governor by a narrow margin for two terms, against the Anti-Masonic party 1829–1835. The latter, in 1835, succeeded in electing Joseph Ritner governor for one term from 1835–1839. In the presidential election of 1836, Van Buren's majority was small, only 4,364 votes, showing that Jackson's majorities had rapidly declined. Although the state remained practically Democratic to the Civil War, yet the majorities were so small as to throw Pennsylvania into the list of doubtful states. When Harrison and Tyler were nominated in 1840, the state went Whig by a plurality of 349 and a majority of 6. Governors David R. Porter (1839–1845), and Francis R. Shunk (1845–1849), were Democrats. Because of Shunk's resignation, elections for President and governor were held

in 1848 and the Whigs were successful in both, the electoral vote being cast for Taylor and Fillmore. William F. Johnston was chosen governor (1848–1852). William Bigler, Democrat, succeeded him (1852–1855), and Bigler's place was taken by James Pollock who was elected by a combination of the Whig and American parties (1855–58). Before Pollock's term was over, the state gave a splendid majority to its native son, James Buchanan, the Democratic candidate for President. William F. Packer, Democrat, became the next governor (1858–1861), but the early Quaker opposition to slavery showed itself in 1860, when the issue was squarely put and Abraham Lincoln received the electoral vote of the state. Since that time its vote has been cast for the Republican presidential ticket until 1912. Twice only have the Democrats been able to elect a governor and then because of internal dissension within the opposite party. The following is a list of the governors from 1860 to the present time: Andrew G. Curtin, Republican (1861–1867); John W. Geary, Republican (1867–1873); John F. Hartranft, Republican (1873–1879); Henry M. Hoyt, Republican (1879–1883); Robert E. Pattison, Democrat (1883–1887); James A. Beaver, Republican (1887–1891); Robert E. Pattison, Democrat (1891–1895); Daniel H. Hastings, Republican (1895–1899); William A. Stone, Republican (1899–1903); Samuel W. Pennypacker, Republican (1903–1907); Edwin E. Stuart, Republican (1907–1911); John K. Tener, Republican (1911–).

The almost unbroken line of Republican governors indicates that Pennsylvania has been for years one of the safest of the Republican states in national elections. In the four campaigns beginning with 1896, the plurality of the Republican presidential electors almost reached 300,000, and in the campaign of 1904 when Theodore Roosevelt was elected President, it attained the unprecedented number of 505,519 votes. During the last twenty years in the national House of Representatives, the Republicans have enjoyed a total representation first of twenty-eight and then of thirty-two members, while the number of Democrats in the same body has never been more than ten and was only one in the Fifty-ninth Congress. The two large cities of Philadelphia and Pittsburgh, especially, have shown themselves to be the strongholds of the Republican party.

The strength of this party organization, perhaps unparalleled outside a municipality, has been attributed by various writers to: (1) the reciprocal benefits derived from a paternalistic tariff; (2) the easily influenced foreign vote; (3) the apathy and antipathy of the many religious sects; (4) the power of two large cities easily controlled, in offsetting the rural vote and in smothering independent movements; (5) the effect of appropriations made to hundreds of hospitals, "homes" and various charitable enterprises scattered through the state, whose employees constitute a reciprocal constituency; (6) the effect of the mountain topography of the state whose valleys magnify local interests and hinder concerted action. Attention is frequently called to the fact that Pennsylvania is the only state crossing the mountains which has not divided along the mountain tops. There are really two states in one, seaboard interests dominating the eastern part and its chief city, inland interests control the western end and its chief city. One United States Senator has been chosen regularly from each city and the governorship given to each end of the state by turn. State associations alternate their meetings in the same manner. The Democratic party, weakened by long absence from office and the loss of the disciplinary power of patronage, has been accused of bargaining with the controlling party for office. Occasional dissatisfaction is manifest as when in 1906 William H. Berry, a Democrat, was elected state treasurer. In 1910, the Socialist party polled 53,053 votes and elected one member of the state assembly. In 1912 the Progressives elected 25 members of the legislature.

School System.—The school system, as determined by the school code of 1911, divides the state into four classes of school districts according to population, which are supervised by boards of school directors varying in number from five to fifteen according to the class of the school district. These directors provide free books and school supplies and meet in convention every four years to elect a county superintendent who may have one or more assistant superintendents, if the number of school districts in the county exceeds 200. School attendance is compulsory for children between eight and sixteen years of age for at least 70 per cent of the school term. The educational policy of the state is directed by a superintendent of public instruction and by a state board of education composed of six members who hold office for six years. The state appropriates money for thirteen normal schools and for higher education in several institutions.

Population.—The population of Pennsylvania in 1790 was 434,373, including 3,737 slaves. In 1850, it had reached 2,311,786. The census of 1900 showed a total population of 6,302,115, of whom 982,543 were whites of foreign birth. In 1910 the number of people in the state had grown to 7,665,111. This rapid increase in the population of the state is due to its immense opportunities in agriculture, mining, and manufacturing. A large part of this population has always been foreign-born and employed in common labor in mines and mills. This, together with the fact that the state is separated into a number of natural divisions by mountains and rivers, has prevented complete assimilation of the population and created the problems which accompany a foreign element.

See CONSTITUTIONS, STATE; GOVERNOR; PARTY ORGANIZATION IN PENNSYLVANIA; STATE GOVERNMENTS; STATE LEGISLATURE.

References: F. N. Thorpe, *Federal and State Constitutions and Charters* (1909), V, 3035–3152; *Colonial Records and Pennsylvania Archives* (1852–1907); S. Hazard, *Annals of Pennsylvania, 1609–1682* (1850); *Report of the Resurvey of the Maryland-Pennsylvania Boundary Part of the Mason and Dixon Line,* authorized by the Legislatures of Maryland and Pennsylvania (1909); H. P. Miller and others, *Smull's Legislative Handbook and Manual of the State of Pennsylvania* (1910); A. S. Bolles, *Pennsylvania, Province and State, 1609–1790* (1899); B. Farree, *Pennsylvania, a Primer* (1904); S. G. Fisher, *The Making of Pennsylvania* (1898); H. M. Jenkins, *Pennsylvania, Colonial and Federal* (1903); J. R. Sachse, *The German Sectarians of Pennsylvania, 1708–1742* (1899); I. Sharpless, *Two Centuries of Pennsylvania History* (1900), *Quakerism and Politics* (1905). EDWIN EARLE SPARKS.

PENSION BUREAU. The office of commissioner of pensions was established in the War Department in 1833, and in 1849 became a bureau of the Interior Department. Its chief function is to examine and pass upon claims for pensions under the laws of the United States providing for pensions for service in war. It is divided into numerous divisions. The Bureau has power to decide and certify who is entitled to a pension and the certificate of the commissioner of pensions is *prima facie* evidence of title. Many private pension bills, providing for payment in particular cases, are passed by Congress. See INTERIOR, DEPARTMENT OF; PENSIONS. **References:** C. H. Van Tyne and W. G. Leland, *Guide to the Archives* (1907), 209–219; J. A. Fairlie, *National Administration* (1905), 205–208. A. C. McL.

PENSIONS, CIVIL. Advantages.—The granting of pensions or retirement allowances to employees of the civil service is exceptional in the United States, although long established in the leading countries of Europe and in Canada and New Zealand. There exists an unquestioned popular prejudice in this country against the granting of civil pensions, founded on the belief that they are contrary to American ideals; and this has been fostered, in part, by popular recognition of extravagance and dishonesty in the granting of military pensions. This prejudice has, however, been diminishing in recent years for several reasons. Increasing recognition has been given to the economic value of properly devised pension or retirement systems. This has led to their adoption by a considerable number of railroads and large industrial plants as well as leading institutions of learning. The higher administrative officials of the government as well as the employees, favor some humanitarian method of securing the removal of those whose further retention leads to inefficiency and the blocking of the road to promotion for those younger and more capable. Their demand has found expression in presidential messages recommending the passage of retirement legislation; in the introduction of numerous retirement measures in Congress and state legislatures; and in the organization of public employees in support of these measures. Only a very small minority of public employees are, today, however, subject to a pension system and in the federal service civil pensions are practically unknown except for judges. Such pension systems as now exist are generally to be found in branches of the public service akin to the military and naval services—in which general pensions have existed for years—and also where service involves some bodily risk, such as the revenue cutter service and police and fire services in cities. Exceptions to this rule are to be found in the case of pensions to school teachers and in local pension legislation of recent date.

Foreign Pension Systems.—Recognition of a duty on the part of the state towards its employees who have become incapacitated after long years in its service appears in European countries from an early date. The first general pension act in England was adopted in 1810, but superannuation funds had existed in certain departments prior to that date and a practice of granting superannuation allowances out of general revenue to deserving employees had also obtained. By acts of 1822 and 1834 fixed contributions from the salaries of employees were required. Investigations by a committee of the House of Commons, appointed in 1856, proved that the contributions were inadequate to meet the charges; the system was popularly regarded as inequitable and in 1857 the act of 1834 was repealed. Under the superannuation act of 1859, a system of free or "straight" pensions at government expense was established; those reaching the retirement age, receiving one-sixtieth of the latest salary received, for each year of service, up to forty-sixtieths. General complaint on the part of the employees that the pension was taken into account in fixing low salaries led to the appointment of a Commission of Inquiry in 1902. A law, which was enacted in 1909, reduced the maximum pension to forty-eightieths of the salary received, certain benefits being assured to those who retire or die before reaching the retirement age. In the other countries of Europe and in Canada and New Zealand the pensions are generally in part contributory and in part at the expense of the state, but a great diversity in system and in the amount of the contributions exists.

American Systems.—In the United States the civil pension systems in force are entirely lacking in uniformity both as regards contributions by employees and as regards the bene-

fits received on reaching the age of retirement. The straight pension has been adopted in a few cases, but usually the system is in part contributory. Some systems are purely voluntary for the employees to enter into or not, as they see fit; others fix no retirement age, but require merely a certain length of service. In certain cases the superior officer is given no power to retire the superannuated. In general, the older systems are crude and are not based on actuarial statistics which permit of the ascertainment of the future cost to the government of their continued maintenance. Amendments are frequently made to them, increasing the benefits accruing to the employees. This diversity in system is well represented by pension conditions in New York City. Members of the police force are required to contribute two per cent of their salaries; members of the fire department contribute nothing. School teachers contribute one per cent; members of the street cleaning force, three per cent; members of the health department, who voluntarily enter the system, one per cent. The police pensions are easy to obtain. Any policeman who has served twenty years is entitled to retire on half pay.

In 1911, the legislatures of Illinois and Massachusetts passed acts providing for general pension systems, in part contributory. The Illinois plan applies to cities of over 100,000 inhabitants and the Massachusetts law to employees of the state and the metropolitan district.

Proposed Federal Plans.—Bills recently before Congress have provided for a retirement system based solely on contributions, as advocated in the annual message of the President to Congress in December, 1910, as well as for the straight pension system, which is endorsed by a majority of the organized federal employees. Under the bill to carry out the contributory plan the government is to keep an individual account with each employee and to guarantee a minimum rate of interest upon the contributions made; contributions are to be based upon annual salary and age of entrance into the service and are fixed at such percentage of salary as will provide at compound interest upon reaching the retirement age an adequate annuity.

See PENSIONS FOR TEACHERS; PENSIONS, MILITARY AND NAVAL.

References: U. S. Civil Service Commission, *Reports,* especially *21st Report,* 242–8, *23rd Report,* 11–12; Committee on Superannuation, *Reports;* National Civil Service Reform League, *Proceedings,* 1901, 1906, 1907, 1909, 1910; *Senate Docs.,* Nos. 290 and 745; New York Civil Service Reform Association, Special Committee on Retirement Legislation, *Report,* 1911; Citizens Union of the City of New York, Pension Committee, *Reports,* 1911, *Am. Year Book, 1910,* 178, 434, *ibid, 1911,* 391, *ibid 1912,* 168.

ELIOT H. GOODWIN.

PENSIONS, CONFEDERATE. While the eleven former Confederate states are large contributors through federal indirect taxation to the support of the national pension system, they have willingly undertaken the additional burden of caring for their own veterans. All of them are maintaining state pension systems for ex-Confederates and their widows, supported by a special direct tax on assessed property, or taken out of general treasury funds. The administration of the pension system is usually under direction of the state auditor or comptroller, though Tennessee, Louisiana, and Florida have state boards of pensions; and Georgia and Texas have each a commissioner of pensions.

Since 1879, Georgia, the state most interesting in its pension system, has expended over $17,000,000 for this purpose. This began with appropriations for artificial limbs in 1879 and again in 1887; regular payment of annual invalid-pensions dates from 1889. In 1893 widows of Confederate soldiers who died from causes of service origin were placed upon the pension roll. Provision was made for indigent veterans in 1896. Increasing liberality was shown in 1902 by granting pensions to indigent widows of Confederate soldiers without regard to the cause of the husband's death. In 1911 a new service-pension law had the effect of increasing the number of Georgia pensioners to 19,764, and the expenditures for the year to $1,180,000. Georgia pays to the disabled rates ranging from $150 a year for total loss of sight to five dollars a year for loss of a thumb. These may be compared with federal rates for the same disabilities of $1200 and $96 respectively. The pensions of all widows and indigent soldiers under the Georgia system are at the rate of $60 a year.

While Alabama ranks next to Georgia in total annual expenditure, it is worthy of note that Florida takes first place in liberality of rates due to a special tax levy of four mills upon the dollar of all taxable property for pension purposes.

The following table exhibits pension statistics collected from the various southern states for 1910. Several of these states have increased largely their pension appropriations for more recent years.

State	Number of Pensioners	Amount Expended in 1910
Alabama	17,481	$857,092
Arkansas	8,764	540,000
Florida	5,905	644,606
Georgia	15,772	937,554
Louisiana	2,750	150,000
Mississippi	9,225	400,000
North Carolina	17,000	450,000
South Carolina	9,592	252,102
Tennessee	7,590	500,000
Texas	11,571	500,000
Virginia	16,000	515,000
Total	121,653	$5,746,354

The Confederate pension systems with their modest provisions are much less open to objection than the extravagant federal system, but complaints of abuses have been heard in Georgia, Alabama, North Carolina and other states.

See CONFEDERATE STATES; FOURTEENTH AMENDMENT; PENSIONS, MILITARY AND NAVAL.

References: State Auditor of Alabama, *Reports*, 1910; State Board of Pensions of Florida, *Reports*, 1911; Commissioner of Pensions of Georgia, *Reports* (1910, 1911); W. H. Glasson, "The South's Care for Her Confederate Veterans" in *Review of Reviews* (1907), "Federal and Confederate Pensions in the South" in *South Atlantic Quarterly* (1910), *South in the Building of the Nation* (1910), VI.

WILLIAM H. GLASSON.

PENSIONS FOR TEACHERS. Pensions or retiring allowances for teachers are usually based upon length of service, rarely upon disability. There are two sorts: those paid directly from the public or institutional treasury, and those made up from contributions of teachers and from appropriations by the state or locality.

Twenty-four states have provided for general state-wide pensioning of teachers (New Jersey, Maryland and Rhode Island without contributions); or have authorized or directed municipalities or districts to provide and pay retiring allowances, *e. g.*, Illinois, Pennsylvania, Wisconsin, Kansas, Utah, Oregon, usually embodying the contributory feature. For New York as a whole, the state teacher's retirement fund is made up of legislative appropriations and salary deductions of one per cent retained from the state apportionment of school moneys. The annuities are limited to $600. Wisconsin has a similar system (excepting Milwaukee, with its own system), optional for teachers in service before September, 1911, and compulsory for all teachers thereafter, with contributions of one per cent of salaries for the first ten years, and two per cent for the second ten years not exceeding $30 annually, the maximum annuity to be $450.

Many municipalities have their own pension systems, some of them having been established before the movement spread to the states; for example, New York City (1894), Brooklyn, Boston, Baltimore, Chicago, Milwaukee, San Francisco, Detroit, Charleston, S. C., Rochester, and Elmira.

The term of service prerequisite to receiving a pension varies from 25 to 40 years, sometimes with limitations as to age, or as to service entirely within the district or the state. Maximum annuities are $200, $500, $650 and $800.

Several universities, like Harvard, Cornell, California, and Chicago, have established systems of retiring allowances for university teachers and officers. The Carnegie Foundation for the Advancement of Teaching, with an original capital of $10,000,000, to be increased to $15,000,000, was created to provide retiring allowances, ranging from $1,000 to $4,000, for teachers in those colleges and universities in the United States and Canada which meet certain prescribed standards and which are not under denominational control. State supported institutions were admitted to its privileges in 1908. Under present rules (1912), persons in accepted institutions who have reached the age of 65 years and who have served as teachers or officers at least 15 years, or who, after a minimum service of 25 years are disabled, are eligible for pensions. On October 1, 1912, 72 institutions were on the accepted list, and 398 persons received pensions amounting to $570,000 for the preceding year.

See EDUCATION, RECENT TENDENCIES IN; PENSIONS, CIVIL; PENSIONS, MILITARY AND NAVAL; SCHOOL FINANCE; TEACHERS, LEGAL QUALIFICATIONS FOR.

References: Nat. Ed. Assn., "Teachers' Pension Laws in the U. S." in *Report on Teachers' Salaries and Cost of Living* (1913), 266–328; S. T. Dutton and D. S. Snedden, *Administration of Pub. Educ. in the U. S.* (1908), 267–271.

KENDRIC C. BABCOCK.

PENSIONS, MILITARY AND NAVAL

Basis.—A military pension is, speaking broadly, a regular allowance made by a government to one who has been in its military service, or to his widow or dependent relatives. Since the performance of military service may be required as a duty of citizenship, no claim for a pension as relief, compensation, or reward can have validity except at the will of the state. A military pension must, therefore, be regarded as a gratuity given to former soldiers for reasons satisfactory to the government concerned, whether to compensate for physical injuries, or to relieve want, or purely as a reward. Military pensions may be divided into the classes of invalid-pensions (or disability-pensions) and service-pensions. An invalid-pension is one granted on account of wounds or injuries received, or disease contracted, in actual military service, usually without regard to the length of enlistment. A service-pension is granted to one who has been in military service for a prescribed length of time, usually without regard to the existence of any injury or disability of service origin. Under limited service-pension laws the service requirement is sometimes supplemented by a requirement

that the applicant be in indigent circumstances, or that he have some disability for earning a living (though not of service origin), or that he has reached a certain age.

In European countries military pensions have usually been granted on account of service extending over long periods of years or because of injuries or disease contracted in actual military service. This is the case in such countries as Great Britain, France, and Germany. In Germany, appointments to minor positions in the civil service are frequently given in lieu of pensions. Nothing in foreign countries can be found to compare with the laws of the United States pensioning hundreds of thousands of persons on the basis of a short service without reference to disability incurred in the performance of military duty.

Colonial and Revolutionary.—Plymouth colony provided as early as 1636 for the maintenance of maimed soldiers during life, and similar laws were passed by several of the other colonies in the seventeenth and eighteenth centuries. The first national pension law, August 26, 1776, promised half pay for life or during disability to every officer, soldier, or sailor losing a limb in any engagement, or being so disabled in the service of the United States as to render him incapable of earning a livelihood. In 1780 half pay for life was promised to officers who should continue in service to the end of the war. Against violent public opposition this grant was commuted in 1783 by the issue of certificates to the amount of five years' full pay. This proved an ineffective settlement, and the matter was not finally closed until full pay for life was granted to the officers surviving in 1828. Congress looked in vain to the states to execute these and other pension laws passed during the progress of the Revolution and under the Articles of Confederation.

In 1789 the Federal Government assumed the payment of Revolutionary invalid-pensions and arrears. The act of February 28, 1793, pensioned invalid commissioned officers at one-half their monthly pay and privates at $5 a month. A gradual increase of liberality as to classes of beneficiaries culminated in the important act of April 10, 1806. The rate of a private's pension was increased to $8 a month by the act of April 24, 1816.

Pension Legislation (1818–1860).—Service-pensions were for the first time granted to the soldiers of the Revolution by the act of March 18, 1818. This law was intended for the benefit of needy persons who served until the end of the war, or for a period of nine months. It granted $20 a month to officers, and $8 a month to privates, during life. Flagrant abuses under this measure aroused public indignation, and remedial legislation in 1820 caused thousands of names to be removed from the pension rolls. The Revolutionary service-pension act of 1832 granted full pay for life to those who had served two years, and a proportionate amount to those who had served not less than six months. Excepting a half-pay grant to the widows and orphans of officers made in 1780, there was no general legislation for the benefit of Revolutionary widows until the act of July 4, 1836. This was the first of a long series of laws for that purpose. It is estimated by the Bureau of Pensions that a total of about $70,000,000 has been expended for Revolutionary pensions.

Beginning with 1790 invalid-pension provisions were made for the soldiers of the regular army. Invalid-pensions were also provided for the soldiers of the War of 1812, of the several Indian wars, and of the War with Mexico. Many years later the surviving soldiers of all of these wars were granted service-pensions.

A navy pension-fund was established by acts of 1799 and 1800 to be made up of the government's share of prize money. This fund became of importance during the War of 1812 but was exhausted in 1842. It was revived and grew to $14,000,000 during the Civil War. After 1870 the income of the fund was inadequate to pay navy pensions.

For service prior to March 3, 1855, bounty lands have also been granted. The records of these land grants, which are incomplete, show that up to June 30, 1912, 598,690 bounty land warrants had been issued for 68,792,270 acres of land.

Civil War Pensions.—At the outbreak of the Civil War there were only about 10,700 pensioners, who received during the fiscal year 1861, $1,072,000. The act of July 14, 1862, was the first important Civil War pension law. Its total disability rates ranged from $8 a month to $30 according to rank. In case a soldier died from causes of service origin, provision was made for pensioning either his widow, or his orphan children under sixteen years, or certain other dependent relatives. This act applied to all military service subsequent to March 4, 1861.

By the act of July 4, 1864, and later liberal laws of similar character the practice of establishing fixed rates for certain specific disabilities was introduced. Total disability to perform manual labor was at first pensioned at $8 a month under the act of 1862. A specific rate of $30 a month was later established for this same degree of disability, and the $8 rate was given for such disabilities as the loss of a thumb or the stiffening of a wrist. To illustrate the increasing liberality of Civil War penion ratings, it may be stated that the loss of both hands in either military or naval service was pensionable at $8 a month beginning with July 14, 1862; at $25 a month from July 4, 1864; at $31.25 a month from June 4, 1872; at $50 a month from June 4, 1874; at $72 a month from June 17, 1878; and at $100 a month from February 12, 1889.

In a similar way, widows' pensions have constantly grown more liberal since 1862. The requirement that the husband's death be the result of army service was abandoned in the act of June 27, 1890. Under the act of April 19, 1908, pensions of $12 a month are granted to widows of soldiers of the Civil War upon proof that the soldier served at least 90 days, that he was honorably discharged, that he is dead, and that the widow married the soldier prior to June 27, 1890.

Mention should be made of the extravagant Arrears Act of January 25, 1879, under which arrears were paid dating back to the soldier's death or discharge on valid claims presented before January 1, 1880. The direct and indirect cost of this law reached hundreds of millions of dollars.

Service Pensions.—Besides the invalid, or general-law, pension system for Civil War soldiers, an exceedingly costly service system has grown out of the act of June 27, 1890. This act granted pensions to those who served 90 days or more in the army or navy during the war and were honorably discharged. The grant was subject to the existence of some degree of permanent disability for manual labor, though this disability need not be due to military service. Rates ranged from $6 to $12 a month according to the degree of disability. Beginning with 1904 an executive order by President Roosevelt directed that old age (over sixty-two years) should be considered a pensionable infirmity in administering the act of 1890. On February 6, 1907, a service and age pension act became law. This granted pensions at $12 a month to persons aged sixty-two for sixty days service in the Mexican War or ninety days service in the Civil War; $15 a month was allowed at the age of seventy, and $20 a month to those seventy-five years of age and over.

The act of 1907 was superseded by that of May 11, 1912, which grants pensions at $30 a month for sixty days' service in the War with Mexico, and at $13 to $30 a month for service in the Civil War, the rates being graded both according to age (whether 62, 66, 70, or 75) and according to length of service (whether ninety days, six months, one year, one and one-half years, two years, two and one-half years, or three years). The long sought "dollar-a-day pension" was thus obtained for very aged soldiers who served for an extended period. It is expected that the act of 1912 will increase the annual expenditure for pensions to about $180,000,000, the largest outlay in the history of the country.

War with Spain.—The Civil War invalid-pension laws have also been applied to the War with Spain and the insurrection in the Philippine Islands at a cost to June 30, 1912, of $35,114,062.

Special Acts.—From 1861 to 1912 Congress has granted 39,472 pensions by special act. The Sixty-first Congress (1909–1911) passed 9,649 special acts, nearly 1500 more than were passed in the forty years from 1861 to 1901. Many claims are thus allowed which have been rejected by the Pension Bureau—often because they are absolutely without merit. These special acts are put through the form of passage with remarkable speed and with little or no attention other than that given by the committee reporting them.

Cost of Pensions.—The total disbursements for military pensions from the foundation of the government to June 30, 1912, amounted to $4,383,368,000. Civil War pensions have cost $4,129,699,000. The number of pensioners on the roll at the close of the fiscal year 1912 was 860,294, and the total amount expended for the year was $152,986,000, excluding $2,449,000 expenses of administration.

See Bounties to Soldiers and Sailors; Cost of Government in the United States; Expenditures, Federal; Pensions, Civil; Retirement of Military and Naval Officers; Soldiers' Homes.

References: J. L. Davenport, "Foreign Pension Systems" in *Senate Doc.*, 57 Cong., I Sess., No. 56 (1901–1902); W. H. Glasson, *Hist. of Military Pension Legislation in U. S.* (1900), "A Costly Pension Law—Act of June 27, 1890" in *So. Atlantic Quart.* (1904), "National Pension System as Applied to the Civil War and the War with Spain" in Amer. Acad. of Pol. and Soc. Sci., *Annals*, 1902; the U. S. Commissioner of Pensions, *Annual Reports* (1833–1912), J. A. Fairlie, *National Administration* (1905), 205, 208; E. H. Hall, "Indignity to our Citizen Soldiers" in *Discourses* (1893); A. P. Hovey, *Soldiers' Rights* (3d. ed., 1890); E. C. Mason *Veto Power* (1890), §§ 71–81; bibliography in A. B. Hart, *Manual* (1908), § 227. William H. Glasson.

PEONAGE. Federal Legislation.—The Fifteenth Amendment gives Congress power to enforce the amendment by "appropriate legislation" but so far only two statutes have been passed upon the subject; by the statute of March 2, 1867, Congress prohibited "the system known as peonage;" June 23, 1874, it was prohibited "to kidnap or carry away any other person with intent to hold him for involuntary servitude." The equally serious offense of detaining a person and requiring forced labor of him is not defined, though it may be indirectly brought within one of the two statutes mentioned. The peonage statute was passed to cover a system in New Mexico and other cessions from Mexico, by which an employee in debt to his employer could be obliged to serve so long as that debt continued.

The term is, however, commonly applied to the holding, and compelling to service by physical punishments, of men and women who have contracted to perform certain labor and are unwilling to carry it out. The prac-

tice is very wide-spread, has been traced in some northern lumber camps, and is used in North Dakota and probably other middle western states to keep tramps at work for the farmers; but has been particularly active in the southern states. Repeated complaints have been made to the consuls of foreign governments that their countrymen, whose railroad fare had been paid by labor agents on condition that they work it out, were held in captivity, even though the contract on the other side had been grossly violated. The same thing happened to American born citizens, particularly the negroes; and in some cases stockades were built and negroes passing by were laid hold of and compelled to work inside the stockade.

Most of the cases of peonage arise out of a contract by a man, usually a negro, to work a particular piece of land. If he gives up in the middle of the season, there is nobody to replace him. Inasmuch as the law of no state recognizes the right of a master to compel the labor of an employee directly, the usual method in such cases is under state statutes, to hold the breach of contract to be a misdemeanor which is punished by fine; since there is rarely money to pay fines, the sentence has to be worked out at so much a day. Then the legal authorities turn over the hand, as a prisoner of the state, to the original master during this period of forced service.

Court Cases.—As prosecutions for peonage before the state courts were not successful, about 1902 various suits were entered in the federal courts of the South. Some of the most serious and law-defying compellors of labor were sent to the penitentiary out of hand. In 1905 in the test case of Clyatt *vs.* U. S. (197 *U. S.* 207), the Supreme Court of the United States affirmed the constitutionality of the peonage act. In Bailey *vs.* Alabama in 1908 (211 *U. S.* 452), the Court refused to pass on the Alabama statute; but in a second case of Bailey *vs.* Alabama, decided Jan. 3, 1911 (219 *U. S.* 219), the Supreme Court held void the Alabama statute under which negroes were practically compelled by courts to work out their labor contract.

See Labor Contracts; Labor, Freedom of; Liberty, Legal Significance of; Slavery as a Labor System; Soldiers and Sailors, Legal Status of.

Reference: A. B. Hart, *Southern South* (1910), ch. xx. Albert Bushnell Hart.

PEOPLE. The word "people" has been used to signify so many different things that it no longer signifies any one thing exclusively. Its confusion with "nation" is noted elsewhere (*see* Nation). It is employed, as well, to denote human beings in general, as distinguished from brutes; indefinite individuals as in the phrase, "people say"; those closely connected with an individual, as members of the family, dependents or domestics; ordinary citizens as distinguished from holders of political office; and, finally, the entire body of subjects or citizens of a state. This last meaning accords with the German usage, which ascribes to the corresponding work, *Volk*, a political signification. Furthermore it enjoys the approbation of many careful American scholars. A people, then may be defined as an aggregate of human beings living under a single political control.

Granting the foregoing definition, can the word "popular" be used to describe those political activities where unanimity is impossible? What is "government of the people, for the people and by the people"? We cannot, in answering this question, escape a numerical test. A government is of the people when a majority of its citizens approve it. It is for the people, however, only when the welfare of every citizen concerns it. It is by the people when the opinions of a majority of its citizens control it. Real popular government is government of a majority of the people, for all the people, by representatives of all the people, chosen, however, by only a part of them.

See Person; Popular Government; Representative Government.

References: W. W. Willoughby, *The Nature of the State* (1896), 9–14; T. D. Woolsey, *Pol. Sci.* (1889), 205, 206.

Henry A. Yeomans.

PEOPLE OF THE UNITED STATES, LEGAL SENSE OF. In our American constitutions the term "people" is used in two senses; first, as designating that body of persons in whom ultimate sovereignty (*see*) reposes and from which the powers of government are derived, and, second, as constituting that body of persons whose rights are designed to be guaranteed and protected. In the first of these meanings, the term designates that body of persons, in fact a minority of the whole body of the people, vested with political rights and privileges, who are authorized in some way to exercise affirmative authority by means of the elective franchise. But even in this sense such persons have collectively only a qualified sovereignty for they can express their will only in methods and on occasions and with reference to questions as provided for in the constitutions under which they attempt to act. In a sense not fully defined or recognized in constitutional provisions, the term "people" is used to include all persons composing the state or nation in its collective and political capacity, and in this sense the term is used in the Declaration of Independence, which proclaims the right of revolution. But any action of the people as a whole or any portion of the people not authorized by constitutional provisions is necessarily unconstitutional and so far as it is thus attempted to interfere with or over-

throw authority exercised in accordance with constitutional provisions is revolutionary.

The term "people" as used in the preamble to the Federal Constitution and in the Tenth Amendment declaring on the one hand that "the people of the United States" for purposes specified "do ordain and establish this Constitution," and on the other hand that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively or to the people" seems to have reference to the body of persons possessing political powers and privileges, and authorized, in methods pointed out, to express their will, and, therefore, in effect, the body of persons authorized to exercise the elective franchise.

See PERSON; POPULAR GOVERNMENT; REPRESENTATIVE GOVERNMENT; SOVEREIGNTY OF THE PEOPLE.

References: J. Story, *Commentaries on the Constitution* (5th ed., 1891), §§ 463–517; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 56–69; H. C. Black, *American Constitutional Law* (3rd ed., 1910) 15–54; J. A. Jameson, *Constitutional Conventions* (4th ed., 1887).

EMLIN MCCLAIN.

PEOPLE'S COUNSEL. A term applied especially in New York City to lawyers furnished by benevolent associations, to give gratuitous legal advice to the poor or oppressed.

O. C. H.

PEOPLE'S PARTY. The official name for the party popularly known as the Populist party. See POPULIST PARTY; SILVER COINAGE CONTROVERSY.

O. C. H.

PERMANENT APPROPRIATION. Permanent appropriations are made by Congress for the support of obviously necessary branches of the government, such as judicial salaries, interest on the public debt and so on. They are made payable out of any funds in the treasury not otherwise appropriated. Military appropriations cannot be made more than two years in advance; otherwise, there is no constitutional limitation on what shall be permanent and what annual. The proportion of the permanent is something more than one-third of the total. Similar systems prevail in some of the states, commonly in the form of an appropriation of a specific portion of the annual tax for a designated purpose. Thus the public schools and the state universities in various states receive the proceeds of a fixed tax rate on all property assessed for taxation, which therefore, gives them an income increasing with the wealth of the community. See APPROPRIATIONS, AMERICAN SYSTEM; ASSESSMENT OF TAXES; COST OF GOVERNMENT IN THE UNITED STATES; ESTIMATES, TREASURY. Reference: A. C. Hinds, *Precedents of House* (1907).

A. B. H.

PERMANENT CHAIRMAN. The committee on permanent organization of a convention returns the name of a chairman and other officers. In the national convention, when the report of this committee has been accepted, the permanent chairman is escorted to the chair, usually amid loud applause. His previously prepared address to the convention eulogizes the party, denounces their opponents and enlarges upon the main issues of the campaign. Throughout the complicated business of drafting a platform and electing candidates the tact, resourcefulness and impartiality of the chairman determine whether the convention shall be a body worthy of the name or merely an unrestrained mob. The permanent chairman of a state or district convention occupies a similar position and conducts much the same business. See CONVENTION; NOMINATION OF THE PRESIDENT. **References:** A. B. Hart, *Actual Government* (1903), 94; J. A. Woodburn, *Pol. Parties* (1909), 180; J. G. Blaine, *Twenty Years of Congress* (1884, 1886), I, 164, II, 386–387; P. S. Reinsch, *Readings on Am. Fed. Gov.* (1909), 834–837.

J. M.

PERNICIOUS ACTIVITY. An expression applied by President Cleveland in 1886, in a letter to the heads of executive departments, to the practice of federal office holders attempting to control political affairs in their home districts. See OFFENSIVE PARTISANS.

O. C. H.

PERSON, LEGAL SENSE OF. The term "person" is used primarily and generally to designate a living human being, and in law it refers to such a human being as is capable of having rights and being charged with duties. It includes citizens, subjects, aliens, slaves and those who are under any disability, as well as those who are recognized as possessing the full measure of legal rights and subject in their full scope to legal obligations. But even in law it is a broad and general term and the sense in which it is used in any particular instance is usually to be ascertained from the context in which it is employed. When the Fourteenth Amendment says that no state shall deprive any person of his life, liberty, or property, without due process of law, the word person includes aliens and corporations.

An ambiguity in the use of the term which must often be settled by construction arises from the recognition of a corporation as an artificial person. On account of this usage persons in law are classified as natural and as artificial persons. Constitutional provisions having reference to rights, duties, and guaranties will be construed as contemplating natural persons only so far as political rights, privileges and duties are concerned, but as having in contemplation both natural and artificial persons so far as they relate to civil rights and the general obligations to comply with the law.

Thus under the Fourteenth Amendment (*see*) corporations are not citizens, but on the other hand the guaranties of due process of law (*see* DUE PROCESS OF LAW) and the equal protection of the laws extend to them. They are not entitled to the privileges and immunities of citizens of the United States or citizen of the states (Art. IV, Sec. ii, ¶ 1). On the theory that the members of a corporation are presumed to be citizens of the state of its creation, it is treated as a citizen of such state in determining the jurisdiction of the federal courts in controversies between citizens of different states (*see* COURTS, FEDERAL, JURISDICTION OF). A corporation is subject to the law on the theory that it is a person. Thus it may be punished for crimes of such character as that they may be committed through agents, although in the statutory or common law description of the crime no specific reference is made to corporations; but the punishment of the corporation as such can not be corporal but can consist only of fines and forfeitures. There are usually statutory provisions as to the method of proceeding for the punishment of crimes committed by corporations. As artificial persons, corporations may sue and be sued like natural persons.

For some purposes partnerships and other voluntary associations are treated as entities so that they may sue and be sued, but they are not regarded in law as artificial persons, and their rights and liabilities are determined on the theory that they are merely aggregations of natural persons. The distinction between a partnership and a corporation is that the former is created and continues to exist only by the voluntary action of its members, while the latter is created by the sovereign power and has permanent existence within the grant made by such power. Municipal corporations as well as private corporations are treated as artificial persons.

See CITIZENSHIP; PRIVILEGES AND IMMUNITIES OF; STATE CITIZENSHIP; and under CORPORATION.

References: Yick Wo *vs.* Hopkins, 118 *U. S.* 356; Pembina Mining Co. *vs.* Pennsylvania, 125 *U. S.* 181. E. McC.

PERSONA GRATA. See DIPLOMACY AND DIPLOMATIC USAGE.

PERSONAL LIBERTY LAWS. The earliest personal liberty laws were statutes enacted by northern states to secure the benefit of trial by jury to alleged fugitive slaves. The first of these were passed by Indiana (1824), Connecticut (1838), Vermont and New York (1840). After the decision of the Supreme Court in the case of Prigg *vs.* Pennsylvania (16 *Pet.* 539 [1842]), laws were passed in several states forbidding state officials to enforce the act of 1793 for the return of fugitives from service. The Fugitive Slave Act of 1850 (*see* COMPROMISE OF 1850) provoked a new series of personal liberty acts. Some states forbade all their officials to aid in the arrest and rendition of fugitives, and prohibited the use of state jails for their detention. Other states sought to secure for fugitives the benefit of the writ of habeas corpus and trial by jury, and designated certain officials to act as counsel for them. The process of identification was made difficult in some states by requiring the testimony of two credible witnesses. Quite commonly, the seizure of a free person upon false representations was made punishable by heavy fine and imprisonment. Down to the close of 1860, at least ten northern commonwealths had sought to prevent the capture and return of fugitive slaves in some or in all of these ways. See FUGITIVE SLAVES; SLAVERY CONTROVERSY. References: M. G. McDougall, *Fugitive Slaves* (1891), chs. ii, v; W. H. Siebert, *The Underground Railroad from Slavery to Freedom* (1898). A. J.

PERSONAL LIBERTY PARTY. The Personal Liberty party was a party in New York and Pennsylvania in 1887. At a convention at Albany, New York, the saloon element, giving itself the name of the Personal Liberty party, demanded that the Sunday laws and other liquor laws should be so modified as to permit saloons to be open Sunday afternoons and evenings, and that tax laws affecting liquor should be repealed. The Personal Liberty party did not nominate candidates, but threatened its 75,000 votes against all candidates who refused to pledge to support the Personal Liberty principles. The New York Democratic state convention declared against "sumptuary laws needlessly interfering with the personal liberty of any portion of our citizens." The Republicans identified themselves with the local option movement. The Personal Liberty party largely supported the Democratic nominees, who were generally successful in the cities. The Prohibitionists divided, some favoring the Republican, others their regular, nominees. Similar results were found in Pennsylvania. The Republican state ticket was elected, but some of the Democratic candidates for local offices in Philadelphia were elected, because of the support from the Personal Liberty party. See LIQUOR LEGISLATION. References: *Independent*, XXXIX, Oct. 6, 1887, 1265; *ibid*, Nov. 17, 1887, 1483, 1484; *Public Opinion*, IV (1887–8), 35, 36, 58, 82. T. N. H.

PERSONAL PROPERTY. Property which is moveable as opposed to that which is fixed or "real." Besides chattels it includes incorporeal personal property such as notes, bonds, corporate stock and other choses in action, and also interests in land less than a freehold. In a strict legal sense, the word property denotes the exclusive right of pos-

sessing, enjoying and disposing of a thing. See PROPERTY. Reference: H. E. Smith, *Personal Property* (2d ed., 1908), §§ 1–3.
H. M. B.

PERSONAL PROPERTY TAX. See TAX, PERSONAL PROPERTY.

PERSONAL UNION. The term is used in political science (*see*) to indicate the connection set up between two distinct and mutually independent states by the fact that each of them is under the same reigning sovereign. Some writers have classified the personal union as a form of composite state (*see*), but this is incorrect as the union does not form a single state but merely represents a certain relationship between two states. In point of law the reigning sovereign of a personal union is two distinct persons, being the head of each state. His constitutional relation to one of the states may be different from that which he occupies in the other. In one he may be an absolute, in the other a constitutional king. The existence of a personal union may be brought about by the succession of a ruling monarch of one state to the crown of another or by election, or by treaty. Examples of personal unions are seen in the case of the junction of Great Britain and Hanover from 1714 to 1837, in that between Holland and Luxembourg 1815 to 1890, and that between Schleswig-Holstein and Denmark, 1776 to 1863. See STATES, CLASSIFICATION OF. Reference: J. W. Garner, *Intro. to Pol. Sci.* (1910), 137, 138. S. L.

PERSONATION OF VOTERS. An expression used to denote plural voting by the same man at the same polling place under different names. The practice is guarded against by thorough registration laws. O. C. H.

PERU. Republic, originally a viceroyalty embracing all the Spanish possessions of South America, declared independence July 28, 1821. It lies on the west coast of that continent, but has an east coast outlet through the port of Iquitos, 2,300 miles from the Atlantic, up the Amazon. The area is 679,600 square miles, the population approximately 4,500,000 about 6.6 per square mile. The present (1912) constitution (November 10, 1860) provides for a bicameral legislative system, consisting of a senate and a house of deputies. There are fifty-two senators, elected by popular vote, the number being apportioned according to provinces in each department; deputies, 116 (in 1911), are elected by popular vote, on the basis of one for each 30,000 inhabitants. Both senators and deputies have terms of six years, the chambers being renewed by thirds every two years, and they must have an income or belong to a scientific profession. Suffrage has an educational qualification. The executive, a president and two vice-presidents, are elected for a non-recurring term of four years by popular vote. The Cabinet consists of six ministers: of government and police; of justice and public instruction; of foreign affairs; of war and navy; of finance and commerce; of public works and promotion. The judiciary is composed of a national supreme court elected by congress, and of minor courts appointed by the president. The republic is divided into nineteen departments, two coast provinces and one constitutional province, all these being subdivided into districts; the executive authority of each department is a prefect appointed by the president, a governor being the head of each district. The army on a peace footing numbers about 4,000, but every citizen from nineteen to fifty years of age is liable to military duty. The navy has fourteen vessels. The post office and telegraph are owned and operated by the government. Lima is the capital. State religion is Roman Catholic. References: J. I. Rodriguez, *Am. Constitutions* (1905), 253–275; Pan American Union, *Bulletin* (monthly). A. H.

PET BANKS. Term derisively applied by the opponents of President Jackson to the state banks which Amos Kendall and Secretary Taney selected in 1833 in which to place the government deposits, in place of the Second United States Bank (*see*). These banks furnished security for the safety of the deposits. See DEPOSIT OF PUBLIC FUNDS; REMOVAL OF DEPOSITS. D. R. D.

PETITION, NOMINATION BY. This method of selecting candidates for office has been gaining in favor in recent years, especially for local elections. It was recognized in early American laws and has been held by the courts to be a constitutional right of the voter. The difficulty of regulating and safe-guarding the direct primary contributes to the popularity of the petition. The primary appears to emphasize the national party in local politics. Nomination by petition renders party choice impossible and is, therefore, well adapted to use in local and municipal elections, where party questions should not intrude. With the adoption of the Australian ballot law nearly every state provided for the protection of the independent voter, who cannot participate in a party convention, through the privilege of nominating by petition. In some cases such nomination is required for the selection of candidates to be presented at the state primaries. Election laws have similar general provisions in the several states, but differ widely in detail. Every signer of a petition must declare that he is a qualified voter and intends to support the candidate named in the petition. No one is permitted to sign more than one petition for the same office, nor may a petition contain the names of more candidates than the number of offices to be filled. Petitions must bear a cer-

tain number of signatures or the names of a certain per cent of the voters and the signers must be duly distributed throughout the election area. In Massachusetts 1000 signatures may nominate to a state office. New York requires 6000 with at least 50 from each county.

A Massachusetts law of 1909 makes nomination of city officers by petition mandatory in Boston and optional in other cities and towns. In Boston a petition must be signed by 5000 registered voters, in a town election by one voter in 50. In New York City 2000 names are required on a petition. A Wisconsin law of 1907 provides that cities may adopt nomination by petition only under a certain specified plan. Since 1906 city officers in Newport, R. I. are by law nominated by petition only. Grand Rapids, Mich., so nominates library commissioners and members of the school board.

Certain abuses have appeared in connection with nomination by petition. Signatures are often forged by wholesale, names being copied from the city directory, and unscrupulous notaries are found to certify to the fraud. Party machines sometimes make use of the petition to attract votes from their opponents by means of a fraudulent independent movement with false signatures. Often the candidate is artfully chosen to divide the vote of the opposing party, or a so-called "labor" petition is circulated by the machine with fraudulent signatures when the working men are believed likely to be attracted by the opposition candidates. By such means astute party managers are sometimes able to defeat the whole purpose of the petition plan.

See CONVENTION, POLITICAL; NOMINATING SYSTEMS; PRIMARY, DIRECT.

References: E. C. Meyer, *Nominating Systems* (1902), 106, 316, 401; C. A. Beard, *Am. Government and Politics* (1910), 149, 598; C. E. Merriam, *Primary Elections* (1908), 85–87, 140.

JESSE MACY.

PETITION, RIGHT OF. A provision is found in the bills of rights in nearly all the state constitutions and in the Federal Constitution (First Amendment), guaranteeing the right of the people peaceably to assemble and to petition the government for a redress of grievances. But no provision is made as to the method of exercising this right, and access to legislative bodies or to the executive for the purpose of presenting petitions can be had only in accordance with the usual course of legislative or administrative procedure. The guaranty is important as recognizing a lawful occasion for the assembly of the people and in connection with the guaranty of freedom of speech and the press. It can not be made unlawful to assemble for the purpose of petition provided the assembly is peaceable and not in its nature obstructive to justice or good order; and the subject matter of a petition can not be made the basis for a prosecution for public or private libel if it is kept within the limits of the privilege accorded. The rules of the national House of Representatives provide that members having petitions to present may deliver them to the clerk and the petitions, except such as, in the judgment of the speaker, are of an obscene or insulting character, shall be entered on the journal and the clerk shall furnish a transcript of such record to the official reporters of debates for publication in the *Record.* See ASSEMBLY, RIGHT OF; FREEDOM OF SPEECH AND THE PRESS; GAG LAWS. References: For a discussion of the "Gag Laws" affecting the right of petition, see J. W. Burgess, *Middle Period* (1897), 253–296; H. von Holst, *Constitutional Hist.* (1881), II, 235–265.

E. McC.

PETROLEUM PEOPLE. A name given by the newspapers about 1864 to the ostentatious newly rich who had gained their wealth from the oil wells of western Pennsylvania.

O. C. H.

PEWTER MUGGERS. An epithet applied to a faction of the Democratic party in New York which opposed the Tammany (*see*) candidate in 1828. The nickname originated from the fact that their meetings were held, in a Frankfort Street resort, over pewter mugs.

O. C. H.

PHARMACEUTICAL LEGISLATION AND ADMINISTRATION. A subject dealing with the regulation of the manufacture, sale and transportation of drugs or medicines. The most important federal legislation is the food and drugs act of June 30, 1906, which makes unlawful the manufacture of adulterated or misbranded drugs within any territory or the District of Columbia, and the introduction of such drugs into interstate or foreign commerce. Drugs are adulterated if they differ from the standard set by the United States Pharmacopœia or the National Formulary except when they conform to their declared standard. A misbranded drug is one bearing a false or misleading statement concerning its composition.

The Secretaries of the Treasury, of Agriculture, of Commerce, and of Labor are authorized to make uniform regulations for its enforcement; and the Bureau of Chemistry is expressly intrusted with the inspection of drugs to determine violations of the law. In 1907 there was appointed a referee board of consulting scientific experts (the so called Remsen Board), to provide expert opinion on difficult or disputed questions; and a board of food and drugs inspection to assist in executing the act. These several authorities report to the Secretary of Agriculture, and furnish data to the district attorneys.

A majority of the states have incorporated in state legislation the principles and some of the provisions of the federal law.

See Drugs, Public Regulation of; Health, Public Regulation of; Professions and Callings, Regulation of; Pure Food.

References: *U. S. Statutes*, XXXIV (1906), 768–772; Secretary of Agriculture, *Annual Reports* (1906–1911); Am. Pharmaceutical Assoc., *Proceedings*, 1910, 623–627; *Am. Year Book, 1910*, 401–406; *ibid, 1911*, 616–618, *ibid, 1912*, 636, 641, *ibid, 1913*, 265.

O. C. Hormell.

PHILADELPHIA

Earliest History.—Established in 1681, Philadelphia was not fully incorporated as a city until 1701. In the minutes of the provincial council of the period, 1683–1701, Philadelphia is spoken of as a "town" and sometimes as a "city." Just what was the status of the city's government, however, is involved in doubt. The first charter of the city was dated "Third Month 20, 1691."

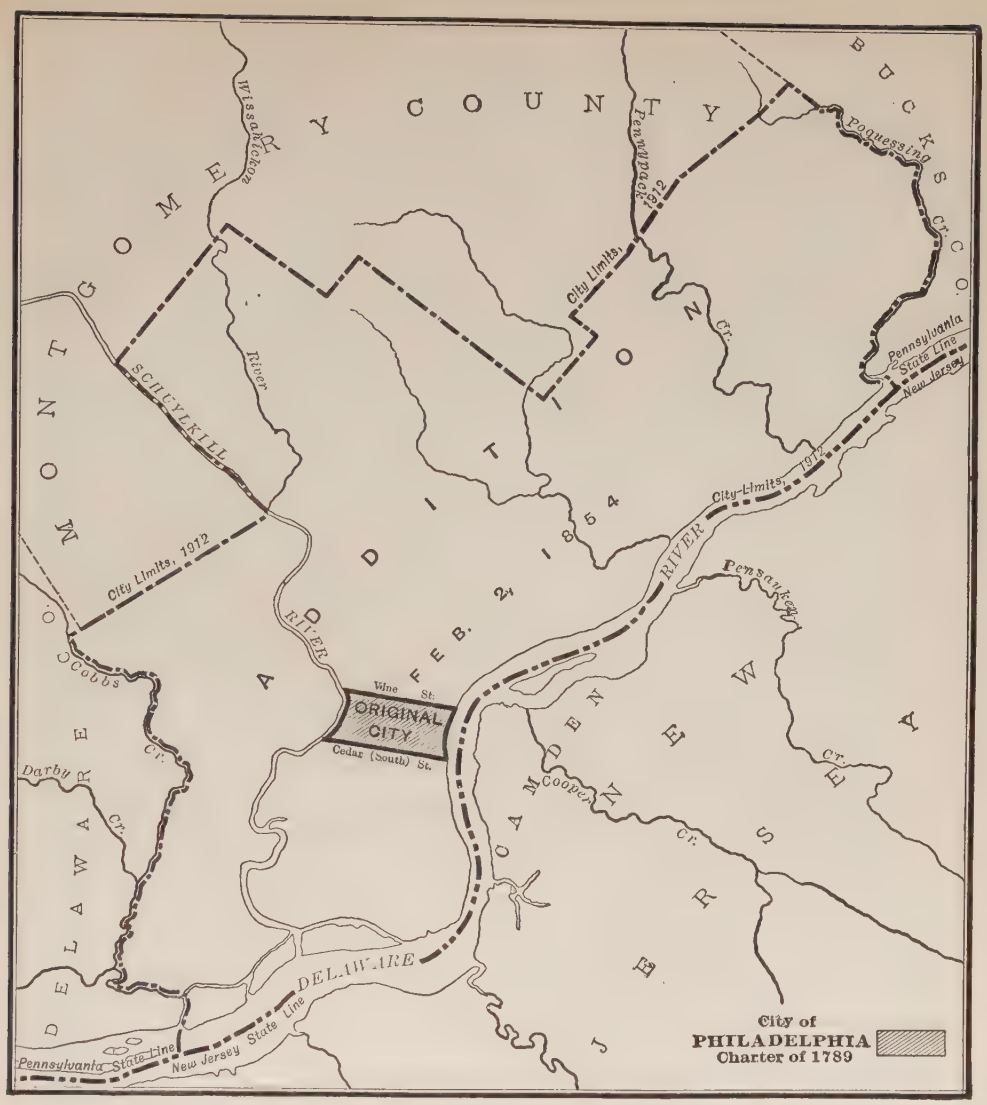
Incorporation.—Notwithstanding the doubt surrounding the first twenty years of the city's history, there is none about the issuance of the charter of 1701 by William Penn. The Penn charter, under which the city was governed from 1701 to 1789, created a close or "mediæval" corporation under the name of the "Mayor and Commonalty of the City of Philadelphia," consisting of a mayor, a recorder, eight aldermen and twelve common councilmen, and possessing the five usual powers of an old fashioned legal corporation. The mayor was elected annually from the aldermen by not less than five aldermen and nine common councilmen. The recorder, common councilmen and aldermen held office for life, and the corporation had power to add to its number as occasion required. Proprietary charters fell with the Revolution, but as the colonial legislature did nothing, from 1776 to 1789 there was a period of suspended municipal existence.

Charter of 1789.—The charter of 1789 created a modern municipality. The usual corporate powers were of course, granted. The government was vested in the hands of fifteen aldermen elected separately by the freeholders of the city, and thirty common councilmen elected triennially by the freemen. Following the old custom, the mayor was elected from their own number by the aldermen, and the recorder by the mayor and aldermen from the freemen. Under this charter, which was amended from time to time, the whole character of the city was transformed from an old, close corporation, modelled on the English plan, into a city wherein its freemen or electors had a voice in the election of the government. Moreover, the character of the city was changed in other respects. The council became more and more powerful and the mayor less so. Responsibility, accordingly, was widely scattered.

Consolidation.—Until 1854 the city of Philadelphia retained its old boundaries as laid down in the earliest charter. The townships in the county of Philadelphia surrounding the city proper had grown with the city and were nearly as densely populated as the old city and as greatly in need of municipal government and control. In 1854, the "Consolidation Act" was passed to give legal form and substance to the fact that the city and county had become one "with a common future and common wants," and to meet adequately the development of the community as a whole. This act abolished all the old subdivisions and made one city out of the old city; the nine incorporated districts; six boroughs and thirteen townships. Since 1854 the city and county have been coterminous and under a single government, with a mayor elected for three years by a plurality vote of the electors. He was given a veto power and retained the powers of a justice of the peace. Aldermen were to be chosen two from each ward, with powers of justices of the peace. The legislative authority of the city was vested in a select and common council. The former consisted of one member from each ward, elected first for two, later for three, years. Common councilmen were elected first for one, later for two, years.

The Consolidation Act changed the boundaries of the city, but effected very little change in the form of the government; so for a period of nearly one hundred years the city of Philadelphia was governed under substantially the same frame of government. There were some changes and the charter became a patchwork of outgrown laws and ordinances. While in some respects there was some slight progress from the confusion that had resulted from the tinkering process toward a more orderly arrangement of the frame of government, nevertheless, generally speaking, the problem grew worse rather than better, and a public movement was inaugurated which grew in force and strength, resulting in the passage of the Act of 1885, known as the Bullit Bill.

Bullitt Bill.—This act went into effect on April 1, 1887, and introduced in place of a complicated series of laws and shreds of law a simplified system of responsible government which forced a complete readjustment of the city's affairs. It made the mayor the chief executive officer, clothing him with ample power to that end, and the councils (the two branches, select and common, being retained) the legislative branch of the government. The city is still governed under the Bullitt Act (1913), the amendments to it being few and unimportant, except as hereinafter pointed out



Boundaries of the City of Philadelphia, Showing Territorial Changes

in connection with the organization of departments. In 1905 the legislature sought to change the theory of the government upon which the bill was drawn by placing the selection of the directors of public works and safety in the hands of the councils. It actually passed the bill, but before it became operative the governor called a special session of the legislature in response to the public sentiment strongly expressed at the polls at the November, 1905, election, and the measure was repealed.

The Mayor.—In its main features and general theory the present charter represents the popular desire for a "strong mayor." As a matter of fact, the Philadelphia plan of municipal government represents the most complete and effective embodiment of the "all powerful mayor" idea in any American city at the present day. Elected by popular vote for a period of four years, and clothed with adequate responsibility and power, he has direct charge, through the power of appointment and removal, of the departments of public safety; public works; public health and charities; supplies; wharves, docks and ferries and transportation (all of which are in charge of directors); and the civil service commission. Only the departments of public safety and public works were provided for in the original act of 1885. The other four have been created out of the reorganization and rearrangement of previous and existing bureaus. The mayor is ineligible for election to a succeeding term. His duties are, generally speaking, to cause the ordinances of the city and the laws of the state to be execut-

ed and enforced; to communicate to councils at least once a year a statement of the finances and general condition of the affairs of the city, also such other information as they may from time to time require; and to recommend by message such measures connected with the city and the protection and improvement of the government and the finances as he shall deem expedient. He is clothed with large power of initiative, as well as control, so that it is within his power and authority to inaugurate and execute plans of far-reaching scope, such as Mayor Reyburn formulated for the material improvement and development of the city under the title *Philadelphia's Comprehensive Plans.* To carry these out he prepared and secured the passage of an ordinance providing for the establishment of a Comprehensive Plans Bureau. Mayor Blankenburg has formulated equally comprehensive transportation plans, to carry out which the department of transportation has been created.

Although the mayor possesses great power, he is placed in a position of dependence as regards certain departments and he can be called speedily to account by the people and made to feel the conserving effect of their desires. This feature of public control grows out of the circumstance that, of the fourteen departments under the mayor and constituting his executive machinery, seven departments are under the control and guidance of officers in whose selection he has no voice. Nevertheless, while it is true that a majority of the members of the cabinet do not owe their appointment to the mayor, they are generally (if not invariably) under political obligations to him. The members of the so-called cabinet in whose selection he has no part are the presidents of select and common councils, the receiver of taxes, the city controller, the city treasurer, the city solicitor, who are elected by the people, and the president of the board of public education, who is elected by that board. The proceedings of this cabinet, when it meets, are largely perfunctory, and I do not recall that it has ever served its original purpose of formulating and forwarding the mayor's policies.

Councils.—The legislative branch of the city government consists of a select and common council, meeting in regular session on the first and third Thursdays of each month. The select branch has a membership of 47, one councilman for each of the 47 wards into which the city is now divided. A member is elected for a term of four years, must be a resident of the ward from which he is elected, and removal from that ward during term of office serves to vacate his seat. In addition to its concurrent legislative powers, the select council has certain powers peculiar to itself. All appointive officers whose salaries are drawn from the city treasury are subject to confirmation by that body; it also sits as a court of impeachment in cases of complaint against city officials. The lower branch has a membership of 81; representation being based upon one member for each 4,000 names on the last completed assessment list, but each ward must have at least one member. Common councilmen are elected for a term of two years. All legislation must be by resolution or ordinance. Each ordinance must pass through a most elaborate system of procedure. If an ordinance authorizes a loan or gives extra pay to public servants after service has been rendered or after the contract has been made, it requires a two-thirds vote to pass. All ordinances may be passed over the mayor's veto by a vote of three-fifths of all elected members, provided action be taken within five days following that veto. Ordinances passed by councils must be signed by the mayor and such action reported to councils within ten days, or at the next councilmanic meeting following the expiration of the ten days. If not vetoed, ordinances become laws without the mayor's signature. In no other city is the bicameral legislature maintained with greater rigidity. The tendency toward a smaller council has been felt but slightly in Philadelphia. Several years ago the basis of representation in the lower branch was increased from 2000 to 4000 taxables, thus reducing the number of members from 146 to the present number, 81. Councils, however, usually act as a unit because so completely under the control of a strong, vigorous, far-reaching political organization which is the real policy-determining power in the city, although the mayor is the strongest single factor.

Debt Limit.—The debt limit of the city is placed at seven per cent, upon the assessed value of the taxable property as fixed at the last preceding assessed valuation thereon. The tax rate is fixed each year by councils. The annual appropriation bill is based upon an estimate prepared in the preceding autumn by the city controller, setting forth the expected revenue of the city for the forthcoming year. This annual appropriation bill cannot allot to the departments a gross sum beyond the limit of such estimated revenue.

Departments.—The department of public safety consists of the bureaus of police, fire, electricity, correction, city property, building inspection, boiler inspection and elevator inspection. The department of public works consists of the bureaus of gas, highways and street cleaning, lighting, surveys and water. The department of public health and charities is subdivided as follows: *Health*—health officer; medical inspection; nuisances, house drainage; vital statistics; ophthalmology; infant mortality; nuisances; disinfection; milk; meat and cattle; tenement house; bacteriology; dentistry for poor school children, and hospital for contagious diseases. *Charities*—general hospital for surgical and other cases; hospital for the insane; hospital for the indigent. The director of the department of supplies is

charged with the duty of purchasing all articles and personal property required in the business of the city. The department of wharves, docks and ferries has full supervision of the wharves, docks and ferries and all other matters pertaining to the river front interest in connection with navigation, not inconsistent with the federal laws concerning navigable streams. The department of transportation has, as its name indicates, charge of the traffic problems of the city. The civil service commission consists of three members appointed by the mayor. Appointments to positions in all branches of the city government are made from lists furnished by this commission. The act of 1906 defines the powers and responsibilities of this body. The receiver of taxes receives all moneys for taxes, etc., paid to the city. The city treasurer is the cashier. The city controller has control of the payment of all accounts, and without his sanction no money can be paid out by the city treasurer. The city solicitor passes on all legal matters pertaining to the city's business. The financial officers of the city (receiver of taxes, treasurer and controller, and the city solicitor) are elected at large by the voters of the city. The sinking fund commission has three members—the mayor, the city controller and a commissioner elected by a majority vote of city councils. These commissioners are custodians of money taken each year from current taxation to provide a fund to redeem the city's bonded obligations at maturity. The department of education is controlled by a board of fifteen members appointed by the judges of the common pleas.

See CITY AND THE STATE; MAYOR AND EXECUTIVE POWER IN CITIES; MUNICIPAL GOVERNMENT.

References: E. P. Allinson and Boies Penrose, *Philadelphia, 1681–1887* (1887); *Philadelphia* (municipal monthly); J. F. Watson, *Annals of Philadelphia* (Hazard, Ed., 1891); D. F. Wilcox, *Great Cities in Am.* (1910), ch. v; A. R. Hatton, *Digest of City Charters* (1906).

CLINTON ROGERS WOODRUFF.

PHILIPPINE ANNEXATION. The Congress of the United States, in directing forcible intervention in the conflict between Spain and the Cuban insurgents, laid upon the people of the United States a self-denying ordinance with reference to Cuba (*see* TELLER RESOLUTION). The Spanish possessions in the Far East and particularly the Philippine Islands lay beyond the accustomed range of American political thought. Hence the destruction of the Spanish fleet in Manila Bay on the morning of May 1, 1898, by the American squadron under Commodore, later Admiral, Dewey, although it drew attention to the islands, was not followed by any general or definite expression of a desire for their annexation.

An accident of war was destined to exert an important influence on the direction of public sentiment. Soon after the destruction of the Spanish fleet telegraphic communication with the islands was severed, so that the orders sent out from Washington on August 12 for the suspension of hostilities, on the signing of the peace protocol, did not reach the Philippines till after August 13, when Manila was captured by the American forces, and on the following day a capitulation was signed. A peaceful occupation of the city under the provisions of the protocol would have excited little feeling, but the report of its capture by force of arms with some casualties, when received in the United States eight days after the signing of the protocol, gave a decided impulse to annexation sentiment. The question as brought up in popular discussion was no longer whether the islands should be taken but whether they should be abandoned.

The tendency to retain them was powerfully reënforced by a missionary spirit which discerned, in the course of events, a providential opportunity to promote the welfare of the natives, an opportunity, the neglect of which, on any ground of preconceived notions of national interest, would constitute a selfish and censurable abdication of duty. Combined with this was the commercial spirit, which saw in the acquisition of the islands an opportunity for the expansion of trade. President McKinley, in his instructions to the American Peace Commission of September 16, 1898, went no further than to say that United States could not accept "less than" the island of Luzon.

During the following weeks, however, much consideration was given to the subject; President McKinley made a tour of the country; and on October 28 the American commissioners were instructed that the President could see "but one plain path of duty—the acceptance of the archipelago." The Spanish commissioners not having accepted this view, the American commissioners presented an ultimatum, embracing the cession of the entire archipelago to the United States and the payment to Spain of the sum of $20,000,000. They declared it to be "the policy of the United States to maintain in the Philippines an open door to the world's commerce"; offered to concede to Spanish ships and merchandise, for a term of years, admission to the ports of the islands on the same terms as American ships and merchandise; and proposed a mutual relinquishment of claims that had arisen since the beginning of the insurrection in Cuba in 1895. On this basis the Philippines and Guam were ceded by the treaty signed at Paris, Dec. 10, 1898.

See INSURRECTIONS, SUPPRESSION OF; TERRITORY, CONSTITUTIONAL QUESTIONS OF; TERRITORY, ACQUIRED, STATUS OF.

References: *Treaty of Peace between the U. S. and Spain; Message of the President to Congress, Jan.* 4, 1899; *Sen Docs.*, 55 Cong., 3 Sess., No. 62, Pts. I, II.

JOHN BASSETT MOORE.

PHILIPPINE ISLANDS

Description.—The Philippine Islands consist of some 3,141 islands lying southeast of the continent of Asia between the meridians of 114° 40′ and 126° 34′ east longitude, and between the parallels of 4° 40′ and 21° 10′ north latitude. The total area is about 127,853 square miles. Two islands are of considerable size, Luzon, 40,969 square miles, and Mindanao, 36,292 square miles. Nine other islands have an area of from one thousand to five thousand square miles, but seven-eighths of the total have less than one square mile. The inhabitants are almost entirely of Malay stock. In 1903 the population was 7,635,426, of which 6,987,686 were classified as civilized.

History.—The islands were discovered by Ferdinand Magellan, a Portuguese in the service of Spain, in March, 1521. He was slain at Cebu in April, but one of his ships, the *Victoria*, returned to Spain, having completed the circumnavigation of the globe. The Papal bulls of 1492 and 1493, and the treaty of Tordesillas of 1494, caused Spain to approach the East Indies by the westward route, around South America. The second expedition under Loaisa, 1525, and the third under Saavedra, from Mexico, 1527, were futile, and by the treaty of Zaragoza, 1529, the line of demarcation in the Far East was extended so as definitely to place the Moluccas within the Portuguese demarcation. Spain continued to seek spice islands within her demarcation, and in 1543 Villalobos gave the Philippines their present name, after the Prince of Asturias, later Philip II. The occupation of the islands was accomplished under Legaspi, who reached Cebu in 1565 and founded Manila in 1571. The dispute with Portugal was quieted by the union of Spain and Portugal in 1580.

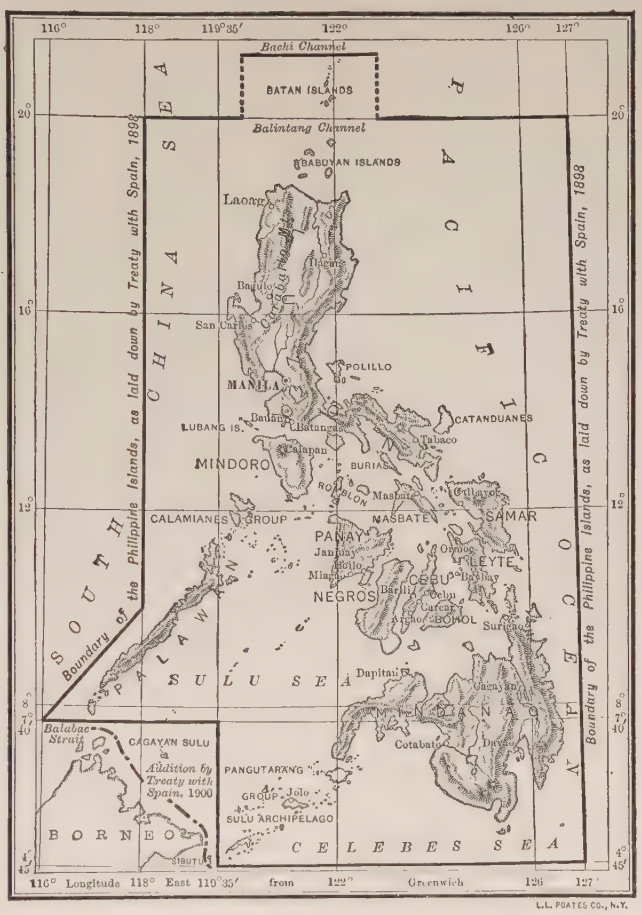
Large portions of Luzon and some of the neighboring islands were soon overrun by the Spaniards and an *encomienda* system, a modification of that employed in New Spain, was introduced. The conquerors were, in turn, threatened by the Chinese pirate, Limahong, and later their shipping was frequently attacked by the Dutch. The most striking feature of their régime was the importance of the church. The friars of the Augustinian, Franciscan, and Dominican orders and the Jesuits performed important services as missionaries and teachers, as protectors of the natives from exploitation and oppression, and as the virtual rulers of the provinces. The islands contained few available resources, and their commercial importance was due to their participation in the trade between China and Europe, via Mexico. In 1762 Manila was taken by a British expedition from India, but restored in 1764 under the treaty of Paris.

About 1800 the development of the islands began. Tobacco, sugar and, later, hemp became important exports. Trade restrictions were lessened. The opening of the Suez Canal, in 1869, affected greatly the commercial, economic and social conditions in the islands. Rebellions, generally on a small scale, had occurred at frequent periods during the entire régime. The Liberal movement in Spain was reflected in the Philippines and native leaders began to demand more liberal institutions and an abolition of the excessive powers of the friars. This movement led to the organization of the Katipunan, a secret organization, which took the offensive in 1896 after the Government had endeavored to suppress it. The rebellion of 1896–7 was bitterly contested and was brought to an end by a compact and a cash payment in 1897. A failure to carry out the reforms insisted upon by the revolutionists led to a renewal of hostilities in 1898 which became involved in the American operations (*see* PHILIPPINE ANNEXATION).

American Occupation.—Manila surrendered to the American forces on August 13, and on the fifteenth a military government was established. Prior to this a revolutionary government had been organized by the Filipino leaders, and later, on January 21, 1899, the constitution of the Philippine Republic was promulgated. In that month the so-called Schurman Commission was appointed by President McKinley to investigate and report on conditions in the islands. Before its members reached Manila the friction between the American and Filipino troops had resulted in hostilities, and the insurrection against American rule was in progress. The final report of this commission, of January 31, 1900, contained a great mass of information regarding the islands. In March a second commission, known as the Taft Commission, was appointed. The existing military government was based upon the war power of the President, no government for the islands having been provided by Congress. President McKinley decided to divide the exercise of the war power, continuing the executive functions in the military governor and vesting the legislative in the commission. The latter assumed these functions on September 1. On March 2, 1901, the "Spooner Amendment" to the Army Appropriation Bill authorized the President to establish temporary civil government. Under this Congressional sanction the president of the Philippine Commission, William H. Taft, was appointed civil governor and empowered to exercise the executive authority in all civil matters. He was inaugurated on July 4. Finally, the Philippine Act of July 1, 1902, continued with

slight alterations the existing government, provided for an elective assembly, and contained a declaration of rights. This act expressly stipulated that the Constitution and laws of the United States did not extend to the islands. The office of military governor terminated on July 4, 1902.

the insular legislature, subject to the power of Congress to annul the same. The high civil and judicial officers are appointed by the President of the United States, with the advice and consent of the Senate. The affairs of the islands are under the jurisdiction of the War Department, in which the Bureau of Insular



THE PHILIPPINE ISLANDS

Home Government.—The Philippine Islands, as a dependency of the United States, are subject to the practically unlimited authority of Congress. In providing for their government and administration Congress is not bound by the Constitution, except as regards the fundamental rights of citizenship (Art. IV, Sec. iii, ¶ 2). This was decided by the Supreme Court in the so-called Insular Cases (*see*) in 1901. Although the act of 1902 denied the extension of the Constitution to the islands, yet the declaration of rights contained in that act provided practically all the rights guaranteed to citizens of the United States under the Constitution, except the right to bear arms and to trial by jury. Congress has passed a few laws of a general nature, notably the tariff laws, but detailed legislation is left to

Affairs (*see* INSULAR AFFAIRS, BUREAU OF) has been organized. Two resident commissioners to the United States are elected by the Philippine legislature for a term of four years.

Insular Government.—In the islands the supreme executive is vested in the governor-general and the heads of the four executive departments. A fifth department has been authorized by Congress, but not as yet established by the President. The governor-general is president, and the four secretaries are members, of the Philippine Commission. The departments are those of: the interior (bureaus of health, marine quarantine service, science, weather, lands); commerce and police (bureaus of constabulary, coast and geodetic survey, labor, navigation, posts, public works); finance and justice (bureaus of justice, treasury, customs,

internal revenue); public instruction (bureaus of education, agriculture, supply, prisons, printing). The new department will probably be the executive department (bureaus of civil service, audits, and executive business). The Philippine legislature consists of two houses. The upper house is the Philippine Commission, composed of nine members appointed by the President of the United States, five of whom are now (1914) natives. The Commission has exclusive legislative control over the non-Christian provinces. The lower house is the Philippine Assembly, composed at present (1914) of 81 members elected by properly qualified voters. The first assembly convened on Oct. 16, 1907, and regular sessions are held annually. At the general election on June 4, 1912, 235,786 votes were cast. The proportion of registered voters to population was 3.5 per cent. Delegates are chosen in the 31 regular provinces, and in the specially organized provinces of Mindoro, Palawan, and Batanes. The houses have the usual privileges of legislative bodies, but in case of failure to pass the necessary appropriation bills the sums stated in the last appropriation bills are deemed to be appropriated. The governor-general has no veto; but participates in legislation as president of the Commission. All laws must be reported to Congress, which may annul them.

Provincial Government.—The islands are divided, for administrative purposes, into 38 provinces. Of these, 31, inhabited by Christian Filipinos, are organized under Act No. 83, and are called "regular provinces." The other seven are specially organized. The first provincial government established under the American régime was that of Benguet, Nov. 23, 1900. The General Provincial Act, No. 83, was passed Feb. 6, 1901, and under its terms civil government was established in the pacified Christian provinces. In the regular provinces the executive consists of a governor, elected by the qualified voters, and a treasurer and fiscal appointed by the insular government. The provincial board consists of the governor, treasurer, and an elected third member. The provincial and municipal officials are elected for four years and are not eligible for reëlection until four years have elapsed. The provincial boards have practically no power of legislation, and the executive officers are mainly engaged in supervising the municipal officers and in lessening centralization. In the seven special provinces all the officials are appointed.

The Moro province, consisting of the greater part of the island of Mindanao and the Sulu Archipelago, has a unique form of government. The province is inhabited by warlike Moros, and, although much has been done toward establishing good order, a firm hand is still necessary. The government consists of a general government in the hands of six officials who also compose the legislative council, and five district governments. The governor and engineer may be officers of the army, and to the present time the general in command of the department of Mindanao has always been appointed governor of the province. The legislative council has considerable power, subject to the revision of the Philippine Commission, and it controls the customs revenue of the ports within its jurisdiction. The district officials are appointed by the governor with the consent of the Legislative Council, and the district governor may be an army officer.

Municipal Government.—Outside of Manila three forms of municipal or local government are found, varying with the political experience of the townspeople. During the military administration pueblos were organized under general orders. The first act of the commission for the establishment of municipal governments dealt with the province of Benguet, and on Jan. 31, 1901, the General Municipal Act, No. 82, was passed. This act, as amended, applied to 725 municipalities in June, 1912. The municipal officers consist of a president, vice-president, secretary, treasurer, and council. The president, vice-president and council are elected by the qualified voters for a term of four years. The municipalities are grouped in four classes, based on population, and the size of the councils varies from eight to eighteen members. The treasurer is appointed by the provincial treasurer with the approval of the provincial board. The secretary is appointed by the president and council. The municipal councils have duties similar to those of municipal bodies elsewhere. Certain duties are optional but others are obligatory, and they have control over certain minor sources of revenue. The right to vote at municipal, and all other elections, is conferred on male citizens, 23 years of age, and six months resident in the municipality, who possess one of the following qualifications: have held a municipal office prior to August 13, 1898; own real estate worth 500 pesos, or pay 30 pesos annual taxes; able to speak, read and write English or Spanish. For the backward provinces and non-Christian tribes township and settlement governments are provided. In the former the suffrage is vested in all males over 18, while in the latter the provincial governor appoints all the officers. In both cases the governors are given greater control than in the regular municipalities. When the people of a settlement have progressed sufficiently they may be organized into a township, and finally into a municipality (*see* MANILA).

Law and Order.—The courts consist of the supreme court, twenty courts of first instance (three parts being in Manila), a court of land registration, and a justice of the peace in every municipality organized under the municipal code. The supreme court consists of a chief justice and six associate judges, appointed by the President, the chief justice and two of the judges being at present natives. The

court has original jurisdiction in certain matters and appellate jurisdiction from the courts of first instance and other tribunals. An appeal lies to the Supreme Court of the United States in cases involving the Constitution, laws, treaties or rights of the United States, and in civil causes in which over $25,000 is involved. Judges of the courts of first instance are appointed by the governor-general and Philippine Commission, they have extensive original jurisdiction and hear appeals from the inferior courts in their districts. The court of land registration consists of a presiding judge and four associate judges. The justices of the peace have limited civil and criminal jurisdiction. They are appointed by the governor-general and commission from lists submitted by the judges of first instance. Assessors may be employed to determine the facts in civil cases in the courts of first instance and justice of the peace. The law officers of the insular government are the attorney-general, solicitor-general, and assistant attorney-generals. The fiscal is the provincial prosecuting attorney.

Order is maintained by the municipal police, at present a poorly organized force of low efficiency, and by the Philippine constabulary, a well-disciplined, highly organized body of native police under, with a few exceptions, American officers. The force consists of about 315 officers and 4,300 men. It is organized and disciplined along military lines, but is distinctly a civil organization. It has rendered most efficient service in the suppression of the disorders and lawlessness which followed the insurrection. The defence of the islands is entrusted to the army and navy of the United States, and the cost is met by the home government. The Division of the Philippines embraces the departments of Luzon, the Visayas, and Mindanao, and its strength consists of about 12,000 regular troops and about 5,800 Philippine scouts. These forces are occasionally called upon to quell disorder in the Moro province.

Finance.—The insular revenue for 1912 was 31,247,633 pesos, of which the customs contributed 17,816,421 pesos, and internal revenue, 9,459,421. The largest items of internal revenue are the taxes on cigarettes, *cedulas personales* (poll tax), spirits, and licenses. Of these revenues, the receipts from the *cedulas* are divided between the provinces and the municipalities, equally, and the other internal revenues are divided 60 per cent to the insular, and 20 per cent each to the provincial and municipal treasuries. Certain license taxes accrue solely to the municipalities, while the land tax is levied by and for the provincial and municipal governments.

Education.—A notable feature of the Philippine administration has been the emphasis upon education, with English as the medium of instruction. The school system includes primary, intermediate, and high schools, leading to the colleges which compose the University of the Philippines. In 1912 there were 3,364 primary, 283 intermediate, and 38 secondary public schools, the average monthly enrollment being 395,075 pupils. The teachers included 664 Americans and 7,696 Filipinos. Special attention is paid to primary and to industrial education. The following colleges are affiliated with the University: the College of Engineering, the College of Liberal Arts, College of Agriculture, College of Law, College of Veterinary Science, Department of Pharmacy, the School of Fine Arts, and the College of Medicine and Surgery. The Philippine Normal School is engaged in an effective work. The expenditure for education is largely met out of insular funds, the American teachers and the insular teachers being thus paid, while about a third of the municipal revenues is devoted to education. In 1912 the expenditures were from insular funds 3,603,385 pesos, provincial funds 208,157 pesos, municipal funds 2,325,344 pesos.

Public Health.—Under the direction of the bureau of health great improvements have been effected in the health and sanitary conditions of the islands. Preventive measures included the cleaning up of the towns, notably Manila, and the installation of new sewers and a safe water supply. In the provinces the problem of securing good water has been met in part by the boring of artesian wells at insular expense. In 1904 a systematic campaign against smallpox, which in 1903 caused 20,359 deaths, was inaugurated. In the next six years 8,166,365 persons were vaccinated with most gratifying results. At present vigorous measures are being taken against tuberculosis, which is the principal cause of death in the islands. The efficient marine quarantine service has succeeded in keeping the islands absolutely free from bubonic plague since 1906, but cholera has frequently appeared in the islands and is believed to be endemic in the region north of Manila Bay. Great improvement has been made in the method of fighting this dread scourge and no succeeding epidemic has equalled the great one of 1902–4. Since 1906 the segregation of lepers has been in process on Culion Island. Within four years 4,775 lepers were transferred there and few remain in the other islands. The annual number of new cases has fallen from approximately 750 to 300, and within a generation or two leprosy should be practically eradicated.

See CITIZENSHIP IN THE UNITED STATES; COLONIZATION, PRINCIPLES OF; DEPENDENCIES OF UNITED STATES; INSULAR CASES; MANILA; PHILIPPINE ANNEXATION; TERRITORY, CONSTITUTIONAL QUESTIONS OF.

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PAYSON JACKSON TREAT.

PHILLIPS, WENDELL. Wendell Phillips (1811–1884) was born at Boston, November 29, 1811. In 1834 he was admitted to the bar. He had already developed a strong dislike of slavery, and the sight of the Garrison mob, in October, 1835, made him an abolitionist. His first great speech was delivered in Faneuil Hall, December 8, 1837, at a meeting called to protest against the murder of Elijah P. Lovejoy; and from that time he was preëminently the orator of the abolition movement. He was, throughout, closely associated with Garrison, and accepted his views without essential modification. He was a delegate to the world's anti-slavery convention at London, in 1840, and until the close of the Civil War spoke and lectured in all parts of the United States, with no apparent diminution of popularity. He opposed the reëlection of Lincoln in 1864, successfully insisted upon the continuance of the American Anti-Slavery Society, and was president of the society from 1865 to 1870. After the abolition of slavery he interested himself in various reforms, particularly temperance and woman suffrage. In 1870 he was the candidate of the Labor and Prohibition parties for governor of Massachusetts. He died at Boston, February 2, 1884. See SLAVERY CONTROVERSY. References: W. Phillips, *Speeches, Lectures and Letters* (1863–81); G. L. Austin, *Life and Times of Wendell Phillips* (new ed., 1888); T. W. Higginson, *Wendell Phillips* (1884); L. Sears, *Wendell Phillips* (1909).

W. MACD.

PHYSICS AND POLITICS

Geographical Position of the United States.—That physical features are an important factor in national development is not now questioned. Among these features are position, land form, the contents of the rocks, the soil, and the climate. America was a reserved continent because it was separated by oceans from the old civilization during many centuries of the more primitive navigation. The continent contained a sparse population and was little used, so far as its chief resources were concerned, down to the time of discovery by Europeans. It was, therefore, a fresh field for human endeavor, opened at a period of modern history when the older countries needed an outlet. Hence it affords an example of geographic influence which is especially capable of analysis.

When Columbus and other mariners from Spain and Portugal set out to discover lands to the westward, it was natural that their landfalls should be in the West Indian region, toward which navigators were directed by the steady help of the northeast trade winds. It is not, therefore, accidental that the northern boundary of Latin America is in its present position. In like manner the French and British explorers and colonists, while facing head winds across the Atlantic, found and exploited those parts of the Atlantic Coast which were most accessible to the home countries. They were, however, forced southward somewhat by finding an inhospitable climate in America, in the latitudes in which they lived when at home.

The United States not only has a position across narrow seas from the progressive countries of Europe, but it also lies over against the awakening countries of the Orient. It thus shares with Canada the advantage of spanning a continent and reaching out on either hand to lands across the sea. If Russia extended westward to the North Sea and at the same time were in control of Gibraltar and the Suez Canal, its position would be comparable to that of the United States since the Panama Canal has been completed.

Openness on the Atlantic Side.—The discovery, colonization, and, in large measure, the mature development, of North America have been on the Atlantic seaboard, or have proceeded from that region. This, with other conditions, has made possible the extraordinarily rapid development of the country of which it would be difficult to conceive had the continent been approached and exploited from its more closed Pacific side.

A physical map of North America shows at a glance that much of the eastern coast possesses a broad coastal lowland, with many tidal rivers and deep bays. In the larger view these reëntrants and channels embrace the Gulf of Mexico, the Chesapeake and Delaware Bays, the Hudson River, the Gulf of Maine, the Gulf and River of St. Lawrence, and even Hudson Bay, though the last is of larger future than past significance. By means of these many tidal avenues, and by using several easy passes across the eastern highlands, the entire interior

of the continent as well as its eastern parts, is tributary to the Atlantic Ocean. Even large sections of the Cordilleran region drain through Hudson Bay to the Atlantic.

Influence of the Features of the Atlantic Slope.—The Atlantic lowlands are most fully developed within the present United States where the first settlements were made, and important cities began their growth. Lying at hand were fertile lands serving as an accessible hinterland for these centres; and over this is spread a continuous population from New England to Georgia.

Back of the lowland lay the Appalachian ranges, which were comparatively rugged and were covered with forests. They served, therefore, the purpose of a useful barrier and cover until the colonial settlements of the lowland had grown compact and strong, and a spirit of unity was secured among the diverse racial and social elements of the people. In natural contrast to these favoring conditions may be placed the ineffective diffusion of the French explorers and colonists in the St. Lawrence region and the great interior. The one people laid the foundation of a government and a nation, while the other scattered their energies over a continental wilderness. This is, of course, not wholly attributable to physical opportunity, for it is necessary to take into account the comparative temperament of the English and the French, and the somewhat fugitive aims of the latter in the field of the fur trade and in missionary endeavor among the scattered native tribes.

Influence of the Passes.—When the population of the lowlands became fairly compact, the ambitions of the more enterprising and the increase of population led about 1760 to the use of the Appalachian passes, and to the first trans-Appalachian settlements. In this stage of early history and down to the present, these passes have had a large function in the distribution of population, the development of industry, and the formation of new commonwealths.

The lowest and most open of these passes is along the Hudson and Mohawk valleys, followed by early trails, the first turnpikes, the Erie Canal and several trunk lines of railway. Thus the lower lake plains and fertile lands of western New York were added to the hinterland of New York City, and the way was opened to settlements along the Great Lakes; and a stream of immigration flowed from New England and New York to the broad lands which now embrace the north central states, or so-called Middle West. In this manner all this territory was, in a partial sense at least, added to the hinterland of the metropolis. At the same time the Lakes exerted their own proper influence in the growth of such cities as Buffalo, Cleveland, Detroit, Chicago, and Milwaukee. The waters offered most effective transportation, and around them and west of them lay one of the broadest areas of productive soil to be found among the temperate latitudes of the world. Not only is the productive capacity vast, and the rainfall abundant, but the surface lends itself to agricultural operations, and transportation is favored both by land and water.

A less open, but effectively used pass served to link Philadelphia and the Delaware embayment with the headwaters and fertile country of the Ohio River. This avenue of traffic led along the lower Susquehanna, crossed the Appalachian ridges first through Bedford, later along the valley of the Juniata, surmounted the Allegheny escarpment, and led on to Pittsburgh. This was an important channel for the westward movement, as it is now efficient through the trunk line of the Pennsylvania Railway system.

A third crossing of the Appalachian highland is found along the valley of the Potomac, and westward to Cincinnati and the middle Ohio River. Its eastern termini are Baltimore and Washington, and it has been followed more or less closely by Braddock's Road, the National Road, the Chesapeake and Ohio Canal, and the Baltimore and Ohio Railway.

The southerly passes are more difficult and less closely related to each other. These conditions, in the past, gave large importance to the broad depression known as the Great Appalachian Valley, which is axial to the entire systems of eastern highlands and includes the Cumberland Valley of Pennsylvania, the Valley of Virginia, and the Valley of East Tennessee. Not only is this a zone of fertility and dense population, but it controlled a stream of immigration from Pennsylvania and other colonies, leading to the southwest, a population which might otherwise have pushed into the forested uplands directly on the west. The result was the settlements in east Tennessee, and at Nashville, and the movement through the Cumberland Gap under Boone and others, and a new center established in the blue grass region of Kentucky.

Early Western States.—To the influence of this great valley is due the admission into the Union of Kentucky and Tennessee, the first states from the region west of the Appalachians.

Through these passes moved the people, who, in half a century prior to the Civil War, expanded the population across the Mississippi plains to the base of the Rocky mountains. States were set up after short periods of development; and railway and steamboat traffic rapidly came to large proportions in the middle west.

The opening of these vast agricultural areas quickened the East in its passage from general agriculture and from individual and household crafts or small factories to special agriculture and corporate industry. These changes were made possible by the food supply from the

interior, and favored by ready water power, abundant coal supply, and nearness to the commercial opportunities on both sides of the Atlantic.

Late Development of the Cordilleran Region.—Since this region was far removed from the early discoveries and settlements on the Atlantic it was naturally the last to be explored, and settled. There was a general opinion that it was worthless, and such sentiments found voice in Congress at the time of the Louisiana Purchase. Its great mineral values were unknown, but the barrenness of much of it under natural conditions was well understood; and no thought of the possibilities of irrigation entered the minds of the American people at that time. Much of it was plotted on the early school maps as the "Great American Desert."

The region was inaccessible from the East by reason of remoteness, primitive transportation, and the wide and dreary stretch of the great plains. Many tribes of warlike savages also made operations dangerous to the white man. Nevertheless about 1842 began an overland movement to Oregon followed by the discovery of gold in California, and a lively movement toward this plateau and mountain country. The building of railways was deferred by the Civil War; and enterprise halted before the commercial inactivity of the Oriental nations. Thus the slow progress of the far West was due in part to historical and in part to natural conditions.

Routes and Centres of the Cordilleran Region.—As elsewhere, the location of routes was controlled by the diversities of land surface and by the distribution of natural resources. The available routes for railways across the belt proved to be numerous. The first road completed from the Mississippi Valley to the Pacific coast was the Union Pacific, connecting with the Central Pacific, a route which availed itself of the low pass of the Rocky mountains in Wyoming and the rich Mormon settlements on Great Salt Lake (*see* PACIFIC RAILROADS).

Other rail routes follow tributaries of the Missouri River until they pass the Rocky Mountains and descend to the ports of Puget Sound, paralleling the traverse made by the explorers Lewis and Clarke in 1805. The interior centers on these railways are determined by the location of the mineral deposits of Montana and Idaho, and the agricultural areas of Washington. Portland is determined by the accessibility of rich lowlands in Oregon, and by the port facilities of the lower Columbia and Willamette rivers.

The southern rail routes pursue comparatively open courses across the southern Rockies, and the plateaus of New Mexico and Arizona, and enter California to the southward of the high Sierra wall which separates most of the state from the Great Basin on the east.

Denver owes its origin to somewhat local conditions, but by progressive life availed itself of the privilege which was sure to come to some city on the western edge of the great plains, of becoming the chief center between the Missouri River and the Pacific coast. San Francisco is central to the Pacific coast of the United States, and by means of its harbor and bay and its relations to the central valley of California, had become a center of sufficient importance to attract the first transcontinental railways. The Puget Sound ports are not only natural termini of traffic by the northern routes, but have been greatly advanced by the natural relations in which they stand to the growing trade with Alaska and the Orient.

Range of Resources.—The territory of the United States has diversity of latitude and this diversity is effective because it includes both the distinctly temperate, and the subtropical belts. Special conditions intervene to give almost tropical warmth to limited parts of the Southwest. Not only latitude, but conditions of land and water, of altitude and of prevailing winds, introduce a variety of conditions suited to many products of the soil. Canada has a larger surface than the United States, but is far more limited in the climatic range of territory available for crops.

In minerals, also, the United States has a comprehensive supply, including the industrial substances, coal, iron, and copper, the precious metals and all the other important metals except tin. Certain tropical products such as coffee, rubber, cocoa, spices, dyewoods, and the heavier cabinet woods, do not thrive within our territory, and they offer occasion for permanent international and interzonal trade. Hence the United States cannot expect to be self-sufficient in material things.

Unification and Expansion.—The territory of the United States is very large, and embraces several regions of great diversity of surface, climate and material resources. If we accept the ordinary principles of geographic influence on nations, we must expect to find such diversity of type and historical movement as would express itself in sectional communities. As a matter of fact, both diversifying and unifying forces are at work; and these forces in both directions are partly geographic, but largely social and historical. Almost violent sectionalism manifested itself before the Revolution when the people of the original colonies saw the processes of expansion west of the Appalachians in other hands. The natural tendencies of the first transmontane groups were towards independence and the establishment of a sovereignty in the Mississippi valley. These tendencies were foreseen and felt by the early statesmen of the federal Union, and were counteracted in part by the speedy utilization of the Appalachian passes as means of ready communication.

Sectionalism was favored in the South by differences of climate and production, and by the introduction and growth of slavery, and

the plantation system. Thus Mason and Dixon's line became more than an arbitrary boundary, and the south central states were divorced in interest from those of the upper Mississippi basin. These differences have largely passed away through the abolition of slavery, and the introduction into the South of modern industrialism. The natural conditions are resuming their sway, political lines are less rigidly drawn, and this result is fostered by new lines of communication between the Great Lakes and prairies in the North, and New Orleans, Galveston, and the Gulf in the South. This unification may be hastened by the completion and use of the Panama Canal, and is similar to the unification taking place on the great plains between the United States and Canada. Minneapolis and Winnipeg do not greatly differ in spirit and commercial or industrial type because they are on opposite sides of the international boundary; there is little to mark the passage from the farms of North Dakota to those of Saskatchewan.

A distinct approximation of principles, ideals, and practical life has been evident in recent years as between the East and the Middle West, and any sectionalism observed in the Cordilleran region is transient and due to the recent emergence from the status of a frontier.

In all these changes we should not fail to mark the influence of increasing maturity, of the wide diffusion of education, and of a vast interstate and interregional commerce. These influences are largely social, but are also in part based on the geographic factors of facilities for transportation and communication. These factors are geographic because they root themselves so deeply in the forms of the land, and the physical relations of sections. The breadth of the Mississippi valley, and its increasing population and wealth of resources make it the largest unifying factor which is observable in the national life. It stands in easy relation to the great seaboards of the Atlantic, Pacific, and Gulf Coasts, and seems more and more destined to carry such balance of power as to make effective sectionalism impossible. It is significant also, that our extraterritorial expansion, though the subject, in the past, of radical differences of opinion, will prove a unifying force. If the incorporation of distinct territories seems to introduce alien elements it also stimulates effort toward their assimilation, and solidifies the national sentiment in its relation to the other powers. These considerations have had a considerable part in the movement for the Isthmian Canal, and have thus indirectly, at least, contributed to the closer union of the East and West.

See American Government and Geography; Frontier in American Development; Physiography of North America; Resources of North America; Sectionalism; Trails and Portages; West as a Factor in Government.

References: A. P. Brigham, *Geographic Influences in Am. Hist.* (1903), *From Trail to Railway through the Appalachians* (1906); E. C. Semple, *Am. Hist. and its Geographic Conditions* (1903), *Influences of Geographic Environment* (1911); L. Farrand, *Basis of Am. Hist.* (1904), chs. i, ii; B. A. Hinsdale, *How to Study and Teach Hist.* (1894), chs. x, xiv, xv; A. B. Hart, *National Ideals* (1907).

Albert Perry Brigham.

PHYSIOCRATS. **See** Economic Theory.

PHYSIOGRAPHY OF NORTH AMERICA

Continental Mass.—The continent includes: the great body of continuous land surface; the marginal sea bottom which is covered by shallow water, and known as the continental shelf; and the islands off the shores. Some of these islands, such as many of the barrier beaches along the coast of New Jersey or North Carolina, are built by wave action on the continental shelf, and others are of coral origin. Some are mountainous uplifts, while others still are parts of old and deeply dissected mountain ranges standing on the borders of the continent and isolated by partial submergence. North America as a continent, therefore, is in a sense as complicated in structure and as much the result of prolonged evolutionary processes, as though an organic form.

Eastern Lowlands.—In New England and parts of the maritime provinces there are along the Atlantic coast hilly lowlands which vary from a few feet to a few hundred feet in altitude, and have resulted from the long-continued denudation of mountainous lands. From New York southward to Florida the lowlands are smooth and consist of strata which are geologically young and which have suffered no deformations. They were parts of the continental shelf and have become land by the slow emergence or uplift of this part of the continent. The same type of surface continues as the Gulf plains through the southern states, and along the eastern border of Mexico. The surface slopes gently to the sea, is moderately dissected by streams, and many of the rivers have tidal courses. At the inner edge of the plain the rivers descend abruptly from the Piedmont or higher ground on the west, at what is called the Fall Line. Examples are the falls of the Potomac above Washington and the rapids of the James at Richmond. Because it marks the head of navigation, a number of cities have developed at this point on various

PHYSICAL MAP
of the
UNITED STATES
Longitude West from Greenwich
ATLANTIC OCEAN
PACIFIC OCEAN
GULF OF MEXICO
CANADA
Hudson Bay
L. Winnipeg
L. Nipigon
L. Superior
L. Michigan
St. Lawrence R.
Mississippi R.
Missouri R.
Ohio R.
Rio Grande
Colorado R.
Columbia R.
Snake R.
Yellowstone R.
Arkansas R.
Red R.
Pecos
Gila R.
Pikes Peak
Fremont Peak
Mt. Shasta
Mt. Hood
Mt. Rainier
Mt. Whitney
Mt. Helena
Mt. Washington
C. Cod
C. May
C. Henlopen
C. Charles
C. Henry
C. Hatteras
C. Fear
C. Canaveral
C. Sable
C. Flattery
Pt. Conception
Bahama Islands
Peninsula of Florida
Appalachian Mountains
Laurentian Plateau
Great Plains
Great Basin
Rocky Mountains
Sierra Nevada
Cascade Range
Coast Ranges
Central Lowlands
Interior Highlands
Great Interior Plateaus
Columbia Plateaus
Colorado Plateaus
Continental Divide
Mississippi Valley
Ohio Valley
St. Lawrence Valley
Great Lakes
Mississippi Delta
Delta of the Mississippi R.
Watershed of the Mississippi R.
Watershed of the Missouri R.
Watershed of the Rio Grande
Watershed of the Red R.
Watershed of the Arkansas R.
Watershed of the Ohio R.
Watershed of the St. Lawrence R.
Watershed of the Columbia R.
Watershed of the Colorado R.
Watershed of the Great Basin
Watershed of the Great Lakes
Watershed of the Hudson Bay
Watershed of the Pacific Ocean
Watershed of the Atlantic Ocean
Watershed of the Gulf of Mexico
Watershed of the Great Plains
Watershed of the Rocky Mountains
Watershed of the Sierra Nevada
Watershed of the Cascade Range
Watershed of the Coast Ranges
Watershed of the Appalachian Mountains
Watershed of the Laurentian Plateau
Watershed of the Great Interior Plateaus
Watershed of the Columbia Plateaus
Watershed of the Colorado Plateaus
Watershed of the Central Lowlands
Watershed of the Interior Highlands
Watershed of the Mississippi Valley
Watershed of the Ohio Valley
Watershed of the St. Lawrence Valley
Watershed of the Great Lakes
Watershed of the Mississippi Delta
Watershed of the Delta

rivers, as Richmond and Raleigh. The coastal plain is especially suitable to the processes and products of agriculture.

Eastern Highlands.—This name covers in a general way the mountain ranges and plateaus of the eastern United States and eastern Canada. As a rule both the rocks and uplifts are ancient and hence by prolonged denudation the surfaces have become well matured and subdued both in form and altitude. In this category belong the low, worn mountains of the Labrador peninsula, of eastern and northern Quebec, and of the maritime provinces.

The United States contains mountain ranges of several different periods. Of very ancient origin, renewed by later uplifts, are the White Mountains and some other uplands of New England; the Adirondacks and Hudson highlands of New York; the highlands of New Jersey, and the Blue Ridge and Unakas of the southern states. Somewhat younger, but still of ancient, or Paleozoic origin, are the Green Mountains and Berkshires of New England and eastern New York. Following these by a long geological interval are those ridges which run parallel to each other and extend in varying number and altitude from the Hudson River opposite Hudson, New York, through the Shawangunk Mountains, the broad central mountain belt of Pennsylvania, and thence through the two Virginias along the eastern border of Kentucky, continuing into central Alabama. A still later and minor uplift deformed the red sandstones of the Connecticut valley and their associated lava beds, resulting after much denudation in the Mount Holyoke and Mount Tom ranges of Massachusetts. In like manner were formed the Palisades ridge of the Hudson and the Orange Mountains of New Jersey.

The Catskill Mountains, so called, consist of uplifted horizontal strata, much dissected. They are, therefore, a true plateau, and continue at varying altitudes through central and western New York, across western Pennsylvania and southward. In Pennsylvania this upland is the Alleghany Plateau. It extends over West Virginia, forms the so-called mountain district of eastern Kentucky, the highland of central Tennessee and disappears beneath the coastal plain in central Alabama. In the south it is the Cumberland Plateau. This entire upland from eastern New York to Alabama is properly termed the Appalachian Plateau and it contains the most extensive beds of bituminous coal in the United States.

Along the axis of the entire mass of eastern highlands extends a spacious valley, due not to the action of any one great river, but to weathering and to many streams operating on a belt of weaker rocks. Parts of this valley have local names such as the Hudson (not including the Highland Gorge), the Cumberland Valley in Pennsylvania, the Valley of Virginia and the valley of East Tennessee. This lowland belt is the great Appalachian Valley. It is occupied everywhere by railways, and contains many cities, such as Easton, Harrisburg, Chambersburg, Hagerstown, Winchester, Staunton, Knoxville, Chattanooga, and Birmingham. It served as a highway in colonial times, and in the period of the Civil War, and will, undoubtedly, always have, as it has had in the past, an important place in American development. The uplands of Ohio and southern Indiana are the western and lower parts of the Appalachian Plateau.

Great Lake Highlands and Plains.—During the closing stages of the glacial period the Laurentian Lakes were vastly greater than now and their waters overspread wide surfaces which now belong to the lowlands along the lake borders. In these larger waters were strewn fine muds which now make lowland soils. These fertile plains are conspicuous in the northern states and in southern Ontario, around all the lakes except Lake Superior. They are often marked by elevated shore lines from which the waters have now retired. The lake bottoms themselves, notwithstanding the considerable depth of these waters, would, if drained, afford vast plains continuous with those now found contiguous to the shores.

Northward from Lake Superior, as well as southward, are somewhat rugged uplands, representing ancient mountains now greatly worn and subdued. These are developed throughout the mining and forest areas in the northern peninsula of Michigan, in the northern half of Wisconsin, and in the more broken parts of northeastern Minnesota.

Central Plains.—A vast plain stretches from the Gulf of Mexico across the United States and Canada to the Arctic Ocean. It may be briefly described by saying that it embraces most of the basin of the Mississippi, Nelson, and Mackenzie river systems. The Nelson River is here made to include its great tributaries, the Assiniboine and Saskatchewan rivers. This plain is in the main a true lowland, but it gradually rises to the west and becomes, at the base of the Rocky Mountains in both countries, a plateau having an altitude of several thousand feet. It is composite in origin, but is, in general, younger than the lands to the eastward and many of the uplands to the westward. Defining its parts more in detail, it includes the Gulf plains, already described, the prairies of the north central states, and the great plains of the region west of the one-hundredth meridian. In Canada, it includes the grain-raising plains and ranch lands of the Canadian Northwest. Thence it reaches over into the Peace River region and embraces the most of the Mackenzie River territory and surrounds the great lakes of Northern Canada. In the far north the central plain reaches out to the east and west and includes vast stretches of flat and rolling tundra in the frozen regions of northern Canada, and the Arctic border of Alaska.

The central plain is rarely interrupted by highlands due to the deformation of strata. An exception is found in the Ozark Plateau of southern Missouri and in the Ouachita Mountains of northern Arkansas and eastern Oklahoma. A further exception near the western border is found in the local uplift of the Black Hills.

The surfaces of the plains differ much in origin, including deltas like those of the Mississippi and Mackenzie, torrential waste plains whose materials are derived from the Rocky Mountains, the glacial outwash plains of many prairies, the lake plains of the Red River Valley, and the exposed and denuded surfaces of marine strata of the Mesozoic Era.

Western Highlands.—These may be regarded as a unit from southern Alaska and the Yukon territory of Canada, to the mountains of Central America. They present, however, many phases both of mountain and plateau. The subordinate units of topography will be briefly enumerated.

The Rocky Mountains constitute both in Canada and the United States the eastern member of these highlands. In the United States they extend from Montana and Idaho through Wyoming, Colorado, New Mexico, and western Texas. They include many local ridges and intermontane basins. In the west, the coast is bordered by ranges that rise steeply from the Pacific shore, from Alaska through British Columbia, the Pacific Coast states, and Mexico. That this series of mountains is not yet fully developed is shown by recent earthquakes and earth movements on the Pacific coast, and perhaps by volcanic agitations in Alaska.

Back of the coast ranges in the Pacific states rise the loftier and older Sierras of California and the Cascade range of Oregon and Washington. These two series of ranges include between them the great central valley of California, the fertile Willamette valley of Oregon, and the Puget Sound valley of Washington.

Between the Rocky Mountains of Canada and the coastal mountains of British Columbia, is the Selkirk range. Between the eastern or Rocky Mountain range and the Sierra-Cascade range lies a series of plateaus and lesser mountain ranges. In the north are the great lava plateaus of the Columbia and Snake rivers, in eastern Washington and Oregon, and southern Idaho. Deep canyons have been formed in the lava sheets by these streams. Along the Colorado River and its branches are the Colorado plateaus. They stand at altitudes of several thousand feet in western Colorado and New Mexico, eastern Utah and northern Arizona, and deep dissection has produced the Grand Canyon and many other profound gorges.

West of the plateaus in central Utah is the short, but lofty Wasatch range. Between this and the Sierras, occupying western Utah and most of Nevada, is the Great Basin. It is a plateau partially inclosed by the high mountains on the east and west, consisting mainly of subordinate basins, which on account of aridity, have no drainage to the sea. Large areas in the northern part of the basin are plains covered with the sediments of vast fresh water lakes, of which the Great Salt Lake and others are the saline remnants. Running north and south in the Great Basin are several parallel mountain ranges, some of them of considerable length and altitude.

Northern and central Mexico has a coastal plain on the east, but descends steeply to the ocean on the west, except the peninsula of lower California. The greater part of the interior, however, is a high and arid plateau flanked by mountains and descending by steep slopes to the coastal plain on the east, and to the Pacific strand on the west. Southern Mexico and Central America have mountains of considerable height, some of them being volcanic peaks of great altitude. The highest point on the continent is the summit of Mt. McKinley in southern Alaska, which is 20,464 feet high.

Glacial Invasion.—Nearly all of Canada and the northern United States was covered by glacial ice. The higher and more rugged surfaces were much subdued, and vast quantities of ancient soil and glacially eroded rock waste were distributed in part by the ice itself and in part by waters issuing from the ice. Thousands of lakes were formed, streams diverted from their courses, waterfalls produced, and moraines and other hills of waste were built. The later agricultural and industrial uses of the land were in high degree shaped by this incident of the physical history of the continent.

See AMERICAN GOVERNMENT AND GEOGRAPHY; FAR WEST; MIDDLE WEST; NEW ENGLAND; NORTH AMERICA; PACIFIC SLOPE; PHYSICS AND POLITICS; RESOURCES OF NORTH AMERICA; SOUTH.

References: I. C. Russell, *North America* (1904), *Glaciers of North America* (1904); S. E. Dawson, *Canada* (1884); H. Gannett, "United States," "North America" in *Stamford's Compendium* (1882); J. W. Powell and others, *National Geographic Monographs* (1895); I. Bowman, *Forest Physiography* (1911); Various authors in *International Geography* (1900), 664–812; A. P. Brigham, *Geographic Influences in Am. Hist.* (1903); A. J. Henry, "Climatology of the U. S." in *Weather Bureau, No. 361* (1906); J. Morse, *Am. Universal Geography* (6th ed., 1812); J. H. Patton, *Natural Resources of the U. S.* (1888); E. C. Semple *Am. Hist. and Its Geographic Conditions* (1903), *Influence of Geographic Environment* (1911); N. S. Shaler, *Nature and Man in America* (1891); C. R. Van Hise, *Conservation of Natural Resources* (1910); J. D. Whitney, *The United States* (1889–1904).

ALBERT PERRY BRIGHAM.

PICKERING, TIMOTHY. Timothy Pickering (1745–1829) was born at Salem, Massachusetts, July 17, 1745. He was admitted to the bar in 1768, and became prominent as a patriot leader. In May, 1776, he was elected a member of the general court, but in December joined the American army at New York, and served throughout the war, holding the ranks of adjutant general and quartermaster general. He was a delegate from the Wyoming district of Pennsylvania to the Federal Convention, and a member of the state constitutional convention of 1789–90. From 1790 to 1794 he was engaged in negotiations with the northern Indian tribes, and from 1791 to 1794 was also Postmaster General. In 1794 he became Secretary of War, and in 1795 Secretary of State, in the latter office succeeding Edmund Randolph. He was unfriendly to Adams, however, and in May, 1800, was removed. The next year he returned to Massachusetts, and in 1802 was appointed chief justice of the court of common pleas. In 1803 he was elected United States Senator, as a Federalist, retaining his seat until 1811. As Senator he was identified with the "Essex Junto," and involved in the so-called "New England plot." From 1813 to 1817 he was a member of Congress. He died at Salem, January 29, 1829. See Essex Junto; Federalist Party. References: O. Pickering and C. W. Upham, *Life of Timothy Pickering* (1867–73); H. Adams, *Hist. of the U. S.* (1889–91), *Docs. Relating to New England Federalism* (1878). W. MacD.

PICKETING. Picketing consists in the posting during strikes, near factory entrances or boarding houses, of members of labor unions, with the design that they shall persuade other workmen not to take the places of the strikers. In most jurisdictions picketing is recognized as legal, if not accompanied by acts or threats of violence, but it has often been enjoined by the courts. See Boycotts; Injunctions; Labor Organizations; Order, Maintenance of; Strikes. Reference: F. T. Carlton, *Hist. and Problems of Organized Labor* (1911), 172–73 J. R. C.

PIEDMONT. Piedmont, once independent, after 1418 was a part of Savoy, after 1720 the chief and determining portion of the kingdom of Sardinia, which in 1848 received a new constitution and began the liberation of Italy by a movement against the Austrians. Sardinia formed an active alliance with England and France in the Crimean war; and in 1859, by aid of France, won the victories of Magenta and Solferino which influenced the movement for united Italy.

American relations with Sardinia began with a treaty negotiated in 1838 by a special American agent. Relations continued through an American *chargé d'affairs* from 1840 to 1850, and a Sardinian *chargé* at Washington from 1839 until Victor Emanuel II became King of Italy in 1861—when the Sardinian *chargé* became the first minister of united Italy at Washington. See Italy, Diplomatic Relations with. References: Pietro Orsi, *Modern Italy* (1900); W. J. Stillman, *The Unity of Italy* (1899); W. R. Thayer, *Dawn of Italian Independence* (1894), *Camillo Cavour* (1911). J. M. C.

PIERCE, FRANKLIN. Franklin Pierce (1804–1869), fourteenth President of the United States, was born at Hillsborough, N. H., November 23, 1804. In 1827 he was admitted to the bar. From 1829 to 1833 he was a member of the state legislature, being speaker the last two years. In 1833 he was elected to Congress, serving four years. He was a warm supporter of Jackson, and in December, 1835, spoke and voted against the reception of abolition petitions. In 1837 he was elected United States Senator. He resigned in 1842, and resumed the practice of law. He declined to be a candidate for governor or for Senator in 1845, and also the offer of appointment as Attorney General in Polk's Cabinet. He was, however, one of the leaders of the Democratic party in New Hampshire, and in 1845 led a hard but unsuccessful fight against John P. Hale for the Senate, over the question of the annexation of Texas. In 1847 he was commissioned brigadier-general, and served throughout the remainder of the Mexican War. He was president of the New Hampshire constitutional convention in 1850. In the Democratic national convention of 1852 he was nominated for President on the 49th ballot, and was elected, receiving 254 electoral votes against 42 for Winfield Scott, the Whig candidate. His administration covered the stormy period of the Kansas struggle and the formation of the Republican party. He urged the annexation of Cuba and signed the Kansas Nebraska Act. He was a strong candidate for renomination in 1856, but was defeated. On the outbreak of the Civil War he sided with the Union. He died at Concord, N. H., October 8, 1869. See Democratic Party. References: N. Hawthorne, *Life of Franklin Pierce* (1852); J. D. Richardson, *Messages and Papers of the Presidents* (1897), V; J. F. Rhodes, *Hist. of the U. S.* (1893–1905), I. II. W. MacD.

PILOTAGE. The Federal Government (Const. Art. I, Sec. viii, ¶ 3) has authority over pilotage; but, as each state had detailed pilotage laws when the Constitution went into effect, Congress, in 1789, provided that "all pilots . . . shall continue to be regulated by the laws of the states wherein such pilots may be." In a few particulars, only, has it been necessary for Congress to supplement or limit the state laws. To prevent interstate friction Congress requires a vessel entering a port or a bay on the boundary between two

states to accept the first pilot offering his services; the states are prohibited from making pilotage charges less on a vessel making an intrastate trip than when entering from the port of another state; the captains and mates of coastwise steamers must be pilots with a federal license, and the states are not allowed to require such federal pilots to secure a state license as a pilot. At the port of New York there are 130 pilots all members of an incorporated body. The several members of the association pilot ships in turn, the earnings are pooled, and each member draws a regular salary. The association maintains a large, safe steam pilot boat. New York state does not require an incoming vessel to take a pilot if none offers his services; but a captain would seldom run the risk of losing insurance by not taking on a pilot. The pilotage rates at New York are $4.88 per foot for vessels drawing 21 feet or more; $4.13 per foot for a draft of 18 to 21 feet; $3.38 per foot for a draft of 14 to 18 feet; and $2.78 per foot for a draft of 6 to 12 feet. See HARBOR SYSTEMS; NAVIGATION, REGULATION OF; SHIPPING, REGULATION OF. References: E. R. Johnson, *Ocean and Inland Water Transportation* (1906), ch. xvi; J. B. Byall, in Am. Acad. of Pol. and Soc. Sci., *Annals*, XXVI (1904), 494. E. R. J.

PINCHOT, GIFFORD. Gifford Pinchot (1865–) was born at Simsbury, Conn., August 11, 1865. He studied forestry in Europe, and in 1892 began the first scientific forestry work in this country on the Vanderbilt estate at Biltmore, N. C. In 1896 he became a member of the National Forest Commission, appointed to frame plans for the administration of the forest lands of the Federal Government; and in 1898 was appointed chief of the forestry division (now the forest service) of the Department of Agriculture. In 1902 he made a report on a forest policy for the Philippines. In 1903 he was made a member of the committee on the organization of government scientific work, appointed by President Roosevelt; and, in the same year, of the commission on public lands. In 1907 he became a member of the Inland Waterways Commission, and in 1908 chairman of the National Conservation Commission, a member of the commission on country life, and chairman of the joint committee on conservation appointed by the conference of governors. In September, 1909, he made a public attack on Richard A. Ballinger (*see*), Secretary of the Interior, charging him with opposing conservation and aiding fraudulent or questionable land schemes. A further attack followed in January, 1910, and he was thereupon removed from office by President Taft. As President of the National Conservation Association, organized in 1909, he continued to agitate for federal control of forests, etc. See CONSERVATION. Reference: *Am. Year Book, 1910*, 42, 293. W. MacD.

PINCKNEY, CHARLES COTESWORTH. Charles C. Pinckney was born in South Carolina in 1746 and died in 1825. He studied law in England and returned to America to begin the practice of law in his native state. At the outbreak of the Revolution he joined the patriotic side; was a member of the provincial congress of South Carolina, and entered the Army soon after the beginning of the war. After serving for a time in South Carolina he went north and joined Washington's army. In 1880 he was at Charleston and was taken prisoner at the surrender of that city to the British. After his release he was made brigadier-general (1783). He was a member of the Federal Convention of 1787 and advocated the adoption of the Constitution by his state. Washington appointed him minister to France in 1796 and the next year he was appointed one of three commissioners entrusted with the task of settling the French troubles (*see* FRANCE, DIPLOMATIC RELATIONS WITH; X Y Z). In 1798 he was made a major-general in the army that was raised to fight France. In the election of 1800 Adams and he were the candidates for President and Vice-President voted for by the Federalist electors. In 1804 and 1808 he was Federalist candidate for President. See FEDERALIST PARTY. References: J. P. Gordy, *Polit. Parties in the U. S.* (1900), chs. xviii, xxi; J. B. McMaster, *Hist. of U. S.* (1883–1900), III, 188f., 317. A. C. McL.

PINKERTON MEN. A term popularly applied to any employees of private detective agencies used for the protection of life and property, particularly during strikes. Pinkerton was a very successful organizer of a detective system; and in times of stress employers sometimes called upon him to furnish what was substantially an armed guard. These men were commonly sworn into service as deputies (*see*) or peace officers, so that they had authority to make arrests. In 1892 a body of Pinkerton's men trying to enter Homestead, Pennsylvania, were assailed by a large number of strikers, and strike-sympathizers including women, and several of them were killed. The labor organizations look upon the Pinkerton men as strike breakers and scabs of the worst kind, not even being workmen out of a job. The practice of self-defense by private guards is manifestly dangerous; and is strictly forbidden by the statutes of some of the states. Employees of the Pinkerton and other firms are, however, often hired as personal body guards by public men and others. See COERCION OF INDIVIDUALS; DETECTIVES, PUBLIC; LABOR, PROTECTION TO; ORDER, MAINTENANCE OF; SECRET SERVICE OF THE U. S.; STRIKES. A. B. H.

PINKNEY, WILLIAM. William Pinkney was born at Annapolis, Md., March 17, 1764, and died February 25, 1822. When he was elected

to the Maryland convention which ratified the Federal Constitution he was a successful lawyer in Harford county. He was a member of the state legislature up to the time of his appointment as special commissioner by Washington, 1796, to determine the claim of American merchants to compensation for losses by acts of the English government. He secured for Maryland a claim on the Bank of England amounting to $800,000. In 1806, he was again sent to England as the colleague of Monroe to take up the question of the rights of neutrals and remained as minister until his recall in 1811. As Attorney General in Madison's Cabinet, he was an earnest advocate of the War of 1812 and entered the army in command of a company of riflemen. For two years previous to 1818, he served as minister to Russia and special envoy to Naples. In 1820, he was elected to the United States Senate, where he strenuously opposed the admission of Missouri under the compromise. See GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; MARYLAND. **Reference:** W. Pinkney, *Life of William Pinkney* (1853). J. A. J.

PIOUS FUND ARBITRATION. The importance of the Pious Fund Case lies not so much in the case itself as in the fact that it was the first case to be tried before the so-called Permanent Court of Arbitration at The Hague, created by the First Hague Peace Conference of 1899 (*see* HAGUE CONFERENCES). The Convention for the Pacific Settlement of International Disputes provided machinery by which a temporary tribunal could be constituted from a permanent panel of judges for the trial of any case which the powers signatory to the convention might care to submit to its decision.

As early as 1697 members of the Order of Jesus undertook the conversion of the Indians of the Californias, and for that purpose large contributions, both of money and property, were received. Upon the expulsion of the Jesuits in 1767 from Spanish territories, the Crown assumed administration of the Fund, and when Mexico obtained its independence, its Government succeeded to the trusteeship. This continued until 1842, when a law was passed incorporating the properties into the national treasury and directing the sale of real estate and other property. At the same time, an acknowledgment was made of an indebtedness of 6 per cent per annum on the proceeds of the sale, and the national revenue from tobacco was pledged to the payment of the income corresponding to the capital of the fund.

After upper California was acquired by the United States in 1848, Mexico paid no part of the income to the beneficiaries there, and the question was presented for adjustment to the United States and Mexican Mixed Claims Commission in 1870. No award was rendered, the American commissioner finding for the claimant and the Mexican commissioner for his government. Subsequently the case was referred to the umpire, who awarded the sum of $904,700.99, this being six per cent upon one-half of the capitalized value of the fund, the other half being considered as available for Lower California (Mexican territory). Mexico, in paying the award, took occasion to state its position, that the payment was a settlement *in toto*, and that any fresh claim would be forever inadmissible.

This position not being agreed to by the United States, a protocol was finally negotiated in 1902, providing that the Permanent Court at The Hague determine the question as to whether the liability of Mexico for the payment of annual interest after 1868 was, by the decision of the umpire, a *res judicata;* and, if not, whether Mexico was so liable; and to render such judgment and award as might be proper under the circumstances. The case was heard in the fall of 1902, and on October 14, the court rendered an award directing Mexico to pay to the United States, in trust for the American beneficiaries, the sum of $1,420,682.67 Mexican, which sum was totally to extinguish the debt up to February 2, 1902, and also directing that the Mexican government pay annually to the United States the sum of $43,050.99, Mexican.

See ARBITRATIONS, AMERICAN; HAGUE TRIBUNAL; MEXICO, DIPLOMATIC RELATIONS WITH.

References: J. H. Ralston, "Report as Agent of the U. S." in *U. S. Foreign Rel, 1902*, App. II, 9–15; J. B. Moore, *Hist. and Digest of Am. Arbitrations* (1898), II, 113–149; W. E. Darby, *International Tribunals* (4th ed., 1904), 901. JAMES B. SCOTT.

PIRACY. "All persons are held to be pirates who are found guilty of piratical acts, and piratical acts are robbery and murder on the high sea" (The Magellan Pirates, 1 Spinks English Ecclesiastical and Admiralty Reports [1853], 81). This definition is too broad for it is generally held that piracy also involves the *animus furandi;* and that the one committing the act is an enemy to all mankind. An American court has held that "piracy is defined by the law of nations to be a forcible depredation upon property on the high seas, without lawful authority, done *animo furandi*; that is, as defined in this relation, in a spirit and intention of universal hostility. A pirate is said to be one who roves the sea in an armed vessel, without any commission from any sovereign state, on his own authority, and for the purpose of seizing by force and appropriating to himself without discrimination every vessel he may meet" (U. S. *vs.* Barker, 5 *Blatchford* 11).

Piracy according to domestic law may be different from piracy according to the international law. The Constitution of the United States provides (Art. I, Sec. viii, ¶ 10) that

Congress shall have power, "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." The United States Government has sometimes refused to recognize as pirates those who have been declared by other states to be pirates, especially where South American states have endeavored to put those rising in opposition to the established government in this category, in order that they might thus deprive insurgents of all rights. The slave trade has sometimes been declared to be piratical. Privateering has sometimes been assimilated to piracy, and many attempts to extend the penalties of piracy to other operations on the high seas have been made.

See CITIZENSHIP; CREOLE CASE; L'AMISTAD CASE; PRIVATEER; SLAVE TRADE.

Reference: J. B. Moore, *Digest of Int. Law* (1906), II, 959–979. GEORGE G. WILSON.

PITTSBURGH. The government of Pittsburgh today is centered in a mayor and a single councilmanic body of nine members elected by the city at large. Except that his appointments of departments heads must be approved by the council, the mayor has full executive authority. The council's legislative powers are limited only by the mayor's veto, which can be overridden by a two-third vote. This is comparatively a new form of charter for Pittsburgh, the mayor having been given large executive powers in 1901 and the council made a single body elected at large in 1911. From Pittsburgh's incorporation, first as a borough in 1794 and then as a city in 1816, until 1901 practically all the powers of government were in councils. There were two bodies, select and common. Until 1834 councils elected the mayor, selecting one of the city's twelve aldermen. These aldermen were simply justices of the peace appointed by the governor of the state. The mayor himself was little more than a committing magistrate, even after 1834 when elected by the people. In 1867 he was given power of veto, which was soon withdrawn by the state legislature and not returned until 1874. But until 1901 councils controlled all the powers of government, directing these through their own committees until 1888, when the executive management was delegated to directors under councils control.

Pittsburgh long had too many councilmen. It was given by its first city charter in 1816 nine select and fifteen common councilmen. this number reaching fifty-seven in the upper and ninety-eight in the lower branch by 1908. From 1833 these councilmen were elected by ward divisions, which proved to be another mistake. Government by councils had become so bad by 1901 that the state legislature, in response to a public demand, granted Pittsburgh a new charter, which gave the mayor full executive authority. There still remained two large council bodies, representing small ward divisions, under which system Pittsburgh found good government impossible. In 1911, therefore, the state legislature gave the city its present council system with a single body of nine members elected at large. The broad executive powers of the mayor were not reduced, except that the council may remove department directors for cause after a public trial.

This, then, is the basis of Pittsburgh's form of charter today. The mayor as chief executive is elected for four years and is not eligible for the next succeeding term. He appoints, with the approval of the council, the heads of the following executive departments: public safety, public works, collector of delinquent taxes, city assessors, city treasurer, public health, charities, law and supplies. With few exceptions the other employees of the city are selected through civil service.

Members of the council are elected for a term of four years. The council has the usual committee divisions, but every councilman is a member of every committee. All meetings are public. The mayor's annual salary is $10,000; members of the Council receive $6,500 and department heads $5,000. The city comptroller elected for four years, is little more than an auditor, without the power of inspection, either over supplies or contracts. This is one of the remaining weak points of the system.

Certain functions of government, while supported by the city out of tax revenues levied by the council, are under the control of other bodies. The school system is in charge of a board of fifteen members appointed by the courts. The public libraries and playgrounds are under excellent private management. The city operates its own water system, a number of public markets, a small electric plant for street lighting and an asphalt repair plant. While garbage and refuse removal is now done under private contract, the city is preparing to handle its own work. The city maintains a hospital for contagious diseases and is equipping a second solely for tuberculosis. The work of its health department, fully organized within recent years, including food inspection, overlaps in a number of instances that department in the state. This conflict of authority and division of responsibility may tend to lessen the department's effectiveness.

The city's property valuation in 1911 for taxation, excluding all property exempt, was $682,248,182 and until that time subject to three classifications: business (full), residence (two-thirds), rural (one-half). On account of the low valuation of unimproved property much was held for speculative purposes. By an act of assembly in 1911 all real estate is now assessed and taxed at a uniform rate based on its full valuation. The council is

not limited in the amount of taxes it can levy and has authority to issue bonds up to two per cent of the city's assessed valuation. By a vote of the people bonds may be issued to seven per cent of the valuation.

Pittsburgh has certain safeguards thrown around its elections, such as joint primaries, (*see* PRIMARY, DIRECT), personal registration (*see* VOTERS, REGISTRATION OF), and a corrupt practices act (*see*). This legislation passed in 1906 has corrected many evils, but in each instance might be strengthened.

See CHARTERS, MUNICIPAL; MAYOR AND EXECUTIVE POWER IN CITIES; MUNICIPAL GOVERNMENT.

References: J. M. Hall, *America's Industrial Center* (1891); articles on Pittsburgh in *Charities*, XXI (1908–9); P. U. Kellogg, Ed., *Pittsburgh Survey* (1909–1911).

TENSARD DE WOLF.

PIVOTAL STATE. A doubtful state whose electoral vote is so large that it may determine the choice of a President is a "pivotal state." Its importance is easily illustrated. Pennsylvania, from the first party division down to 1885 has, with but two exceptions, always voted for the successful presidential candidate. In the elections from 1836 to 1860 five changes of party majorities occurred in this state. If the state had gone Democratic in 1848 it would have decided the election for Cass. On two other occasions the electoral vote of Pennsylvania would have almost turned the scale. Since 1860 New York has been the pivotal state. A change of six hundred popular votes in New York state would have defeated Cleveland in 1884. Ohio and Indiana stand next to New York as pivotal centers although the smaller totals of their electoral votes render them less powerful.

In addition to the typical characteristics of a doubtful area, pivotal states show other features growing out of their great national importance. From the first moment of excitement to the end of election night they are in the limelight. The ranks of their politicians and great men more often than any others furnish the successful candidates to the national conventions. During the campaign proper, time, interest, speeches, literature and funds are poured upon them by the national committee. They are the real battlefields on which the two leading parties struggle for the mastery since success in these limited areas assures success in the nation.

See NOMINATION OF THE PRESIDENT; PARTY ORGANIZATION IN MASSACHUSETTS; PARTY ORGANIZATION IN PENNSYLVANIA; PARTY SYSTEM IN DOUBTFUL STATES.

References: T. H. McKee, *National Conventions and Platforms* (4th ed., 1901); M. Ostrogorski, *Democracy and Party System* (1910), 155, 207; J. Macy, *Party Organization and Machinery* (1912), ch. xiii.

J. M.

PLANT INDUSTRY, BUREAU OF. The Bureau of Plant Industry in the Department of Agriculture (*see*), is directed by a bureau chief, and prosecutes the study of plants in all their relations to agriculture. The work of the Bureau, in detail, covers the study of problems in plant pathology, such as diseases of fruit-trees, and other trees, and of cotton plants, the improvement of plants, such as the sugar-beet, the investigation of soil-bacteriology and water-purification, the acclimatization and adaptation of crop plants, the investigation of medicinal and poisonous plants, of fibres, of grains, of tobaccos, fruit investigations, and investigations in farm management and dry-land agriculture. The Bureau operates seed-testing laboratories, standardizes grains, maintains field stations in connection with reclamation projects, reseeds denuded mountain and grazing lands, experiments with green house gardening, and conducts the congressional free distribution of seeds. See AGRICULTURE, RELATION OF GOVERNMENT TO; ANIMAL INDUSTRY, BUREAU OF; ENTOMOLOGY, BUREAU OF; FOREST SERVICE. Reference: Dept. of Agriculture, *Annual Reports*.

A. N. H.

PLATFORM, POLITICAL. **History.**—In the United States resolutions formally adopted by authorized party delegates have become an important political institution under the name of party platforms. The American party platform is a product of the convention nominating system. Before there were national conventions party issues were defined by other means. The Virginia and Kentucky Resolutions (*see*) formulated by Jefferson and Madison, and the replies thereto from six Federalist legislatures are the first party statements. Previous to 1840 a few platforms were also adopted by various party bodies. The congressional caucus (*see*) that nominated Jefferson in 1800 adopted a platform of eleven resolutions. The New York supporters of DeWitt Clinton in 1812 also formulated their beliefs in a platform. Nothing more of the nature of a platform appears until 1832 when a National Republican ratification convention met in May after the national convention and adopted a platform. In the campaign of 1836 the Democrats and the Whigs of New York each adopted resolutions that embodied a statement of party principles. The first national platform eminating in regular order from the nominating convention was the Democratic platform of 1840. Its nine planks were, with slight variation, reënacted by every Democratic convention till 1860. The Whig convention that nominated Clay in 1844 drew the first platform of that party. Thereafter platform-making became an important duty of every nominating convention (*see*).

Contents.—A platform must state the issues that divide parties. The Virginia and Ken-

tucky Resolutions with the replies by Massachusetts and other state legislatures presented the fundamental conflict between state rights (*see*) and centralized, or national government. The principles thus early formulated have appeared in nearly all the platforms since adopted by the two great parties. Most of the resolutions in the Democratic platform of 1840 deal with the limitation of the powers of the general government, and in 1856 and 1860, when the conflict between state rights and federal authority was again acute, the Democrats incorporated the Virginia and Kentucky Resolutions in their national platform. Traditionally the party of Jefferson and Madison has ever maintained the rights of the state, and the opposing party, under its various names, has emphasized the importance of a strong central government. Closely connected with this contest has followed the equally persistent difference over the tariff question. The party of Jefferson maintained from the beginning that Congress had no power under the Constitution to collect customs duties save for revenue only. This position was specifically stated in the Democratic platform of 1892, fully a hundred years after the doctrine was first formulated. The opposing party with equal persistence has advocated a protective tariff. For more than fifty years, also, one party denied and the other affirmed the right of Congress to provide for a banking system. These fundamental distinctions appear as earmarks in party platforms. They do not ordinarily represent the actual issues of the campaign; they rather indicate opposing theories of legislative policy. Actually the parties do not always move in strict harmony with their theories.

In one respect platforms are all alike. They claim for their party superior honesty, efficiency and economy in executive and administrative policy. Efficiency may even become the leading issue. In 1876, for instance, the Democratic convention that nominated Tilden, instead of the ordinary formal resolution, issued an address arraigning the party in power for its manifold abuses and presenting a list of specific reforms which the country required. This is but an exaggeration of one characteristic of the orthodox platform which lauds its own party and denounces the enemy. If the party is in power it approves of the administration, gives a catalogue of its good deeds, and adds a list of the failures and the iniquities of the opposing party. When this is done in florid style and is the chief feature, the document is called a "ringing platform."

Besides the permanent features that indicate party theory and the self-glorification and criticism of the enemy, the typical platform contains a large amount of other matter of which the immediate object is to carry the election. In this division belong resolutions designed to conciliate specific classes of voters or to give expression to sentiments of reform, or to forestall the influence of a minor party. Since the Civil War the platforms of both parties express interest in the soldiers of the Union. The appearance of labor organizations was accompanied by expressions of special interest in wage earners. Long after the Government had withdrawn equal protection from naturalized citizens who might return to their native lands, foreign-born citizens continued to read in the recurring platforms of the party in power a demand for equal protection. Both parties expressed sympathy with the Home Rulers in Ireland in the platforms of 1888. Such resolutions are bids for the massed vote of a special class (*see* VOTE).

Of a slightly different type are the resolutions for reforms that involve no party conflict. The civil service reform is championed in both platforms; the parties have vied with each other in expressions of opposition to monopoly, in demands that public lands be reserved for the use of actual settlers and in expression of opposition to every form of franchise abuse. In 1872 the national Prohibition party (*see*) appeared. Since then a resolution in favor of temperance has occasionally been adopted by Republican national conventions; and resolutions condemning sumptuary legislation have appeared in Democratic platforms. Woman's rights have found favorable mention in a number of Republican platforms, and in the Progressive platform of 1912; the Democrats have ignored the subject. Both parties pose as champions of education, each claiming to have followed the more consistent policy toward the public schools. Such are the various resolutions put in the platforms for campaign uses. They appeal to some sentiment or prejudice, but call for no distinct party action and involve no peculiar responsibility.

Hedging.—Of a different order are the matters of public policy that require action and in respect to which there are conflicting opinions. By skillful hedging these topics are treated so that no large body of voters will be alienated from the fold. Questions of public debt and specie payments, in the years immediately following the Civil War, were handled with extreme caution, as neither party was united on the subjects. Certain portions of the public debt were clearly payable in coin, other portions in greenbacks; but the remainder whose form of payment was unspecified caused the difficulty. The Republicans, being in power, had solved the problem in favor of the bondholders and specie payments, and justified the policy in their platform. The Democratic convention of 1868, while condemning the act in their platform nominated a candidate from the gold-coin wing of the party. The question of a return to specie payments was equally fraught with difficulties, and was met with the same kind

of wavering policy. Before resumption was completed the battle between the gold and silver dollars entered politics. On this issue both great parties pursued a plan of hedging until the campaign of 1896, in which the Republican platform opposed the free coinage of silver, and each wing of the Democratic party put forth its own platform and candidates. In recent years questions growing out of the Spanish-American War, island possessions, the Panama Canal, public lands, and trusts, have furnished abundant opportunity for platform-makers to exercise ingenuity in harmonizing all factional views in a compromising statement of party principles.

Third Party Platforms. Minor parties arise to champion special issues of which the regular parties have taken too little notice, or to give voice to new points of view (*see* THIRD PARTIES). Their platforms, therefore, although they follow the general style of party phraseology, usually lay special emphasis on the particular problems that called them into being. As their names indicate they champion Prohibition, Union Labor, Equal Rights, etc., etc. At times the Prohibitionist Party aspires to become one of the leading parties and puts forth a complete platform including the chief issues of the campaign, but it still lays special emphasis upon prohibition. The Progressive party which supported Theodore Roosevelt as a candidate for the presidency in 1912 grew out of a split in the Republican party.

See CONVENTION, POLITICAL; NOMINATING SYSTEMS IN THE UNITED STATES; NOMINATION OF PRESIDENT; PARTY, PLACE AND SIGNIFICANCE; see also parties by name.

References: E. Stanwood, *Hist. of the Presidency* (1898); T. H. McKee, *National Conventions and Platforms* (4th ed., 1901); T. V. Cooper, *Am. Politics* (1882), Bk. II; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II. 334; J. A. Woodburn, *Pol. Parties* (1903), ch. xii; H. J. Ford, *Rise and Growth of Am. Politics* (1908), 350 *et seq.;* platforms for successive presidential campaigns of recent years can be found in *World Almanac.* JESSE MACY.

PLATO, POLITICAL THEORIES OF. See POLITICAL THEORIES, ANCIENT AND MEDIÆVAL.

PLATT AMENDMENT. The annual appropriation bill for the Army passed March 2, 1901, contained a proviso offered in fulfillment of the declaration of April, 1898 (*see* TELLER RESOLUTIONS) by Senator O. H. Platt of Connecticut to "leave the government and control of the island of Cuba to its people," so soon as a government was established under a constitution defining the future relations between the United States and Cuba, substantially as follows: (1) Cuba is never to enter into any treaty tending to impair her independence or to give any foreign power a lodgment in the island; (2) the public debt shall be limited according to the ordinary revenues; (3) consent shall be given for the intervention of the United States "for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty," and for discharging certain obligations imposed by the treaty of Paris, which were to be assumed by the government of Cuba; (4) all acts of the United States during the military occupation of Cuba are to be validated, and rights acquired thereunder confirmed; (5) plans for the sanitation of Cuban cities are to be executed, to prevent the recurrence of epidemic diseases and protect commerce; (6) the Isle of Pines is omitted from the proposed constitutional boundaries of Cuba, the title thereof being left to adjustment by treaty; (7) to enable the United States to maintain Cuban independence, lands for naval stations are to be sold or leased as agreed upon with the President; (8) the foregoing provisions are to be embodied in a treaty between Cuba and the United States.

It was officially explained to the Cuban constitutional convention that "the intervention described in the third clause of the Platt amendment is not synonymous with intermeddling or interference in the affairs of the Cuban government"; and on June 12, 1901, the above provisions were made part of the constitution.

The American military governor of Cuba held control until May 20, 1902, when he transferred the island to a newly elected president. In September, 1906, however, circumstances seemed to require a reoccupation of Cuba; and an army of pacification, composed of about 6,000 soldiers of the United States Army, remained on duty in the island until January, 1909. In 1912 a similar intervention was threatened.

See CUBA AND CUBAN DIPLOMACY; SPAIN, DIPLOMATIC RELATIONS WITH.

References: U. S. War Department, *Annual Reports, 1899–1903, 1904,* 108, 109, 187–192, 251–253, 450–454, *1906,* I, 89, 90, 447, 467, *1908,* I, 73, *1909,* 55; *Cong. Record,* 56 Cong., 2 Sess. (1901), 2954, 3036–3042, 3145–3155, 3332–3335, 3373–3384, 56 Cong., 2 Sess. (1906), 32, 849; L. A. Coolidge, *An Old Fashioned Senate* (1910). C. G. CALKINS.

PLAYGROUNDS. The playground movement, like many other social movements that have come under public control, began as a private philanthropy. Less than a decade ago probably nine-tenths of all the playgrounds in this country were so carried on; today, half or more are under some city department, and the system is destined generally to be, recognized as a municipal function. The chief playground problem is what to do for boys and girls between the ages of 11 and 17.

The three kinds of playgrounds usually found are: athletic fields; intermediate play-

grounds; sand gardens. Apart from the New England commons, which have for centuries served as athletic fields, the first public playground in this country was the Boston sand garden opened in 1885 and now universal. Good instances of athletic fields for grown-ups are: the sixty acres at Washington Park, Chicago (1876); the ten acres at Lincoln Park in that city; the fifty and sixty acre fields in East and West Parks, Philadelphia; the forty acres of parade ground in Brooklyn; the forty acres of Franklin Park, Boston.

The number of cities maintaining playgrounds has grown from 90 in 1907 to 177 in 1908, and 336 in 1909. In 1912, 533 cities were interested in one type of playground or another, 129 cities had playground associations, and 47 cities had playground or recreation commissions, of which 7 had both.

The early public playgrounds were located in school yards, mostly of small dimensions, maintained for a half-day, during four or five weeks of the summer. Today most of the municipal playgrounds are maintained for the entire year, and the school playgrounds for four or five months, in many cases open at night. They often include outdoor gymnasia, wading pools, swimming pools and field houses. Gymnasium directors have been added to control and develop the games, sports and athletics. Later, managers for the entire field were provided, and various assistants, such as musicians, librarians, kindergartners, swimming teachers and story tellers. The latest development is the employment of a social worker, paid for twelve months in a year by a park commission to cultivate the social nature of those who use the playgrounds.

Great as is the progress already made, no town or village has as yet made adequate provision. Chicago is probably in the lead in the material provision made for play and exercises of children of all ages. The distinctive feature of the Chicago plan adopted is the recreation centres provided by referendum vote of the people, and open all the year for children and adults. These centres vary in extent from two to sixty acres, the average being about ten acres; they contain trees, shrubs and lawns, and some have lagoons for boating a play-field for baseball, football and other games, which is flooded in the winter for skating; a children's playground with swings, teeter boards, slides, giant strides, wading pools and sand courts, over which awnings may be stretched; benches are provided for mothers who come to watch their children at play. There is an outdoor gymnasium for women and girls over ten years of age, and another for men and boys over ten years of age, a fine outdoor swimming pool surrounded by electric lights, so that it can be used in the evening, and two days each week are reserved for women and girls. Sand courts give the bathers some of the pleasures of a beach.

Indoor facilities consist of two gymnasiums, one for men and boys and the other for women and girls; lockers, shower and plunge baths, refectory, reading room, small club rooms and assembly halls for the entertainments, dances, meetings and social gatherings of the people. It costs $30,000 a year to maintain each of these recreation centres and the total annual expenditure for maintenance of recreation centres and playgrounds is $500,000. A social director is in charge of each, to insure and promote the best use and highest efficiency of the centre, and he has a staff of 8 to 15 men and women. The Public Library Board supplies books and attendants for the reading room.

See AMUSEMENTS, PUBLIC; AMUSEMENTS, REGULATION OF; EDUCATION, RECENT TENDENCIES IN; HEALTH, PUBLIC, REGULATION OF; PARKS AND BOULEVARDS; SCHOOL PROPERTY; SCHOOLS, SUMMER.

References: Playground Assoc. of America, *Proceedings* (1907–1911); Joseph Lee, *Constructive and Preventive Philanthropy* (1910); *Am. Year Book, 1911*, 259, *ibid, 1912*, 722; E. B. Mero, *Am. Play Grounds* (1908); M. L. Green, *Among School Gardens* (1910).

F. D. WATSON.

PLUMED KNIGHT. A designation applied to James G. Blaine (*see*), first by Colonel Robert Ingersoll, in 1876 in a speech at Cincinnati advocating the nomination of Mr. Blaine for the presidency. "Plumed Knight" clubs were organized in Blaine's support in the campaign of 1884. O. C. H.

PLUMPING. The system of voting in which an elector casts, for a single candidate, as many votes as there are vacancies to be filled. Such a system of cumulative voting is used in the election of state representatives in Illinois by which representation is practically assured to the minority party in each district. See MINORITY REPRESENTATION; VOTING CUMULATIVE. O. C. H.

PLURALITY. A term signifying the number of votes received by a candidate in excess of the votes received by the candidate having the next greatest number, in case there are more than two candidates, with no one receiving a majority of the vote. O. C. H.

PLUTOCRACY. A term signifying government by the wealthy class; also applied to a class governing in consequence of its wealth. O. C. H.

PLYMOUTH. When the Separatist congregation at Leyden resolved to effect a removal to America, an arrangement was entered into with the London Company whereby the prospective emigrants were authorized to settle within the bounds of Virginia and to exercise a liberal measure of self-government. The

landfall of the Mayflower's company, however, proved to be, not the Delaware region to which they were bound, but the coast of Cape Cod Bay. The grant from the London Company was accordingly inoperative. In default of other basis of government, the settlers drew up and signed on shipboard, November 11 (21), 1620, the instrument commonly known as the Mayflower Compact. Acknowledging unreservedly their allegiance to the king, the signers solemnly joined themselves in a body politic and engaged to enact from time to time such just and equal laws as should be thought "most meet and convenient for the general good of the colony." There was no thought of adopting a constitution for an independent commonwealth, nor even of setting up a governmental system that should be other than provisional. It fell out, however, that the Mayflower Compact remained the fundamental law of the colony until the union of Plymouth with Massachusetts Bay in 1691.

Throughout the upwards of three-quarters of a century of its separate existence the colony maintained a government of the simplest order. At the head was the governor, elected by the freemen for a term of one year. Associated with the governor were the assistants, chosen annually by the freemen. At the beginning there was but one assistant, but in 1624 the number was increased to five, and in 1633, to seven. It was the duty of the assistants to share with the governor the burdens of administration. Originally, the freemen comprised all signers of the Mayflower Compact, and that meant all adult males of the first migration save three or four seamen and servants. As population grew there were added to the body of freemen such persons as were specifically admitted by the freemen themselves. The status of freemen carried with it the right to vote. In the early days of the colony the voters assembled in a single town-meeting. As new towns were established the election of officials and the enactment of laws in primary assembly grew more difficult, and in 1638–39 there was established a representative system closely patterned after that already existing in Massachusetts Bay. When, in December, 1686, Plymouth was ordered to yield her independence and to send representatives to sit in the council of Governor Andros at Boston, she promptly complied (*see* NEW ENGLAND, BRITISH PROVINCE). With the fall of Andros the colony recovered for a time her accustomed autonomy; but when, in 1691, a new charter was promulgated for Massachusetts Bay, Plymouth was definitely incorporated with her more powerful northern neighbor.

See MASSACHUSETTS.

References: N. B. Shurtleff, Ed., *Records of the Colony of New Plymouth* (1885–7); W. T. Davis, Ed., *Bradford's Hist. of Plymouth Plantation* (1908); J. Winsor, *Narrative and Critical Hist. of Am.* (1886–89), III, ch. viii; E. Arber, *Story of the Pilgrim Fathers* (1897).

F. A. OGG.

PLYMOUTH COMPANY, TERRITORIAL GRANT TO. Under date of April 10 (20), 1606, a patent was issued by James I of England whereby were created two associations designated as the London and Plymouth companies. To each was assigned for purposes of settlement and exploitation a generous portion of the American territory then claimed by the English under the name of Virginia. The London Company (*see*) was authorized to plant a colony at any "fit and convenient place" between the parallels 40° and 41°; the Plymouth Company, at any place between 38° and 45°. The region between 38° and 41° might be settled by either company; but neither was to make a settlement within one hundred miles of a "plantation" established by the other. The prospective colonists were extended a guarantee of all liberties, franchises, and immunities belonging to Englishmen anywhere, and there was provided a cumbersome system of government comprising a Council for Virginia, resident in England, a separate council for each company, also resident in England, and, a council for each plantation resident in America. Each council was to consist of thirteen members, all appointed in the first instance by the Crown, though subsequently the choice of the plantation councils might be provided for otherwise by royal order. In May, 1607, the Plymouth Company sent out 120 colonists in charge of George Popham, and a settlement was established at Fort St. George at the mouth of the Kennebec River. A severe winter, however, prompted the abandonment of the colony, and although the Company retained its legal identity until its reorganization in 1620 under the name of the Council for New England (*see*), it made no further attempt at colonization. See MASSACHUSETTS BAY. Reference: W. MacDonald, *Select Charters* (1899) 7.

F. A. O.

POCKET VETO. See VETO POWER.

POLICE COMMISSIONS AND COMMISSIONERS. Three of the largest cities of the United States, St. Louis, Boston and Baltimore, have state control of municipal police. In St. Louis this control is in the hands of four commissioners appointed by the governor of Missouri who, with the mayor *ex-officio* constitute the police commission. In Boston there is a single commissioner appointed by the governor of Massachusetts. In Baltimore the board of police commissioners consists of three members chosen by the two houses of the Maryland legislature in joint session. Among the other cities, large and small, where the police is under local control, the two systems

of administration by boards and by single commissioners find about equal favor. New York, Chicago, Philadelphia and Detroit, for example, have placed their police in charge of single commissioners appointed by the mayor. On the other hand, Cleveland, Denver, San Francisco, and several other cities retain the board system, the members of the board being chosen by the mayor of each city for terms prescribed by law. The board plan is still largely in use among smaller cities where commissioners can be secured to serve without stipend; but in the larger cities the single, paid commissioner arrangement seems steadily to be gaining ground. See BOARDS, MUNICIPAL; CITY AND THE STATE; MAYOR AND EXECUTIVE POWER IN CITIES; ORDER, MAINTENANCE OF; POLICE IN AMERICAN CITIES; POLICE, METROPOLITAN.

References: F. J. Goodnow, *Municipal Government* (1909), ch. xii; D. B. Eaton, *Government of Municipalities* (1899), ch. xvi.

W. B. M.

POLICE, CONTINENTAL. The police systems of various countries in continental Europe are more or less directly under state control. Where municipal authorities exercise authority over the organization and activities of local police they do this merely as agents of the central government. In the communes (cities, towns and villages) of the French Republic the local police force is directly under the supervision of the mayor who is chosen for a four-year term by the council of the commune. But the *commissaire de police* or chief local officer is appointed by the central government; the *sergents de ville* are appointed only with the prefect's approval; and the *gendarmes* are selected from a list furnished by the minister of war. In the smaller communes the *gardes champêtres* or rural constables are appointed by the mayor. In all cases, however, the mayor's authority is strictly supervised by the prefect and all regulations as to rates of pay, duties, discipline and dismissals are subject to the approval of this officer (*see* PREFECT).

In the three largest cities of France, Paris, Lyons and Marseilles, the police are directly under the control of prefects. In Paris a special officer called the prefect of police, who is directly responsible to the minister of the interior, has immediate charge of the capital's police establishment; in Lyons the regular prefect of the Rhône is the officer directly in charge; in Marseilles the function has been given to the prefect of the department of Bouches-du-Rhône.

In the smaller cities of the German Empire the *Bürgermeister* has charge of the local police, subject to the strictest sort of supervision by the national authorities. In the larger cities a commission appointed by the central government is usually in control.

In other countries of continental Europe, Italy, Spain, Portugal, Belgium and Greece, the French system of local police control and organization has been more or less closely followed; in Austria the system is much like that of the German Empire. In Russia the centralization of control is still stronger.

Distinguishing characteristics of police organization and functions in all these countries, in addition to strict central supervision, are: the rather intimate relations which exist between civil police and the military establishment; the wide range of powers exercised by the police; and the customary division of the police forces into separate branches for the performance of specialized functions. Throughout continental Europe it is the custom to recruit the police from the lists of men who have served a term of service in the army and have had good records there. Again, it is almost everywhere the custom to use police officers in the performance of certain duties, such as the inspection of buildings, which in England or America would be entrusted to ordinary administrative officials. Special divisions of the police force are charged with such matters, for example, the *Bau-Polizei* in Germany or the *police des moeurs* in France, the latter having the enforcement of laws relating to public morals. In point of efficiency and integrity both French and German municipal police have maintained a high standard, this being due not only to the prior military training of officers but to the security of tenure enjoyed by all connected with the system and to the strict supervision exercised by the central authorities.

See CITIES, CLASSIFICATION OF; MUNICIPAL GOVERNMENT IN CONTINENTAL EUROPE.

Reference: W. B. Munro, *Government of European Cities* (1909).

WILLIAM BENNETT MUNRO.

POLICE COURT. See COURT, POLICE.

POLICE IN AMERICAN CITIES

Precedents.—When the methods of English local administration were transplanted to the American colonies during the seventeenth and early eighteenth centuries, the work of policing the parishes of England was in the hands of local justices and constables. The justice of the peace, who was the most conspicuous figure even in the purely administrative branches of local government during the Tudor, Stuart and early Hanoverian periods, was a royal appointee. In each parish the justice appointed a number of constables, usually unpaid save

for small sums given to them for special duty. In the boroughs, that is to say in those parishes which had obtained royal charters conveying a considerable degree of local independence, the police arrangements were not far different. Constables here performed the work, aided in some places by watchmen who patrolled the streets through the night, calling out the hours. These constables were usually appointed and paid by the watch committee of the borough council.

Colonial Systems.—Arrangements of much the same sort marked the beginnings of local police administration in the American colonies of England. When the first settlements were made along the Atlantic seaboard, the duty of preserving local order and of enforcing the regulations of the town was usually given to one or more constables, elected at the annual meetings of the townsmen, burghers or freeholders. But where a settlement obtained a charter from the governor of the colony in which it was situated, this charter usually prescribed the ways in which police functions should be administered. The first formal charter of New York, granted by Governor Thomas Dongan in 1686, provided for a sheriff, a high constable, a marshal, and several constables who were particularly enjoined by the terms of the charter to "make a presentment of all such persons as shall neglect or refuse to clean their streets, and of all such as in any way break the Holy Sabbath, or commit other misdeeds." As the city grew in population, more constables were needed and the Montgomery Charter of 1730 authorized the annual appointment of fifteen of these officers who were to be assigned to the different wards. In all the colonial boroughs and towns the work of the constables was supplemented by the night-watchmen. Freeholders were supposed to take turns at this duty, but they were permitted, as in England, to hire substitutes. Benjamin Franklin headed a movement for the reform of the police of Philadelphia.

Peel's English Police.—These arrangements served well enough in the colonies and even after the Revolution so long as the towns were small; but in England, where the boroughs grew rapidly during the early years of the nineteenth century, the system of half-paid constables and watchmen broke down utterly. Despite sporadic attempts to improve the work of these officials by better pay and stricter rules, there was an astounding annual increase in crime, especially in London, until Parliament finally intervened to recast the entire police system of the metropolis.

After a series of parliamentary investigation extending over many years Sir Robert Peel brought forward a bill for London, enacted in 1828. This abolished the constables and watchmen, replacing them by a body of well paid, professional policemen who gave all their time to the performance of their police functions. Unlike the old constables the new policemen were uniformed and drilled—a civil militia in fact. The whole force, numbering at the outset nearly three thousand men, was placed directly under the control of commissioners appointed by the Crown. This was the first attempt, in any country, to establish a police system upon strictly professional lines.

Professional Police in America (1844–1861). The new arrangements were, at the outset, very unpopular in London. Policemen were, from the name of their sponsor, termed "peelers" or "bobbies" in derision, and in their work of keeping the local peace they encountered many difficulties due to the general unpopularity of the system. But the results in the decrease of crimes soon justified Peel's policy; in due course similar arrangements were established in the other large cities of England, and before long the main features of the system found adoption in other countries.

The first American city to undertake police reorganization along the lines laid down by Peel's act, was New York where, in spite of the increase of the city's population to over 300,000, the ward constables and the citizens' night watch continued to supply the only makeshift for a system of public safety. An act of the New York legislature passed in May, 1844, abolished these officers and established a professional force of eight hundred men under a chief appointed by the mayor. For the time being, the subordinate officers and the patrolmen were appointed for each ward by the ward alderman but in 1853 this function was tranferred to a board of police commissioners consisting of the mayor, the recorder and the city magistrate. In due course other American cities followed the example of New York; among them Philadelphia in 1850, Boston in 1854 and Baltimore in 1857. By 1860 nearly every city of any consequence in the United States had established a modern police system.

State Control (1887–1913).—Down to the middle of the nineteenth century the policing of towns and cities in the United States had been wholly under the control of the municipal authorities. But in 1857, owing to a general dissatisfaction with the way in which local police affairs were managed, the legislature of New York state united New York City, Brooklyn and adjacent municipalities into a metropolitan police district and placed this area under a state-appointed police commission (*see* POLICE, METROPOLITAN). Three years later the legislature of Maryland put a state commission in charge of the police system of Baltimore; in 1861 state control of municipal police was provided by the Missouri legislature for St. Louis, and about the same time the police system of Chicago was taken in charge by a state commission. Similar action was taken in Detroit and Cleveland during the years 1865–1866.

In due time came a reaction against this policy of transferring local police control to the hands of central authorities. In Cleveland and Chicago the new plan of supervision was abandoned within a few years; in New York the police were handed back to the municipal authorities in 1870; but in Detroit the state police commission was not dissolved until 1891. Baltimore and St. Louis, on the other hand, retain the system of state control and these two cities have been joined by Boston, where the state took over the supervision of municipal police in 1885 and has kept it in hand since that time. Of the six largest American cities in 1912, therefore, three have municipal police control (New York, Chicago and Philadelphia), and three are policed under the direct supervision of a state-appointed authority (St. Louis, Boston and Baltimore). In Boston a single commissioner, appointed by the governor of Massachusetts, is in charge; the other two cities are under police boards (*see* POLICE COMMISSIONS AND COMMISSIONERS).

Administration.—In American cities which have direct authority over their own police, and this comprises all but a half-dozen of the entire number, the supervision of this branch of local administration is exercised either by a single commissioner or by a police board of from three to five members. Among the larger cities some use one plan and some the other; New York, Chicago, Philadelphia and Detroit have each a single commissioner or director of police, while Cleveland, San Francisco and Denver have police boards the members of which are appointed by the mayor. In the smaller cities this plan of supervision by a board (usually an unpaid board) is the one most frequently followed.

Commissioners.—When the municipal police system is in charge of a single commissioner, this official is usually chosen by the mayor, but in many cities the mayor's selection is subject to confirmation by the city council or by the upper chamber of this body if there are two branches. In a few cities, notably New York, the mayor's choice requires no confirmation by any other authority. The commissioner (or superintendent, or director, as he is sometimes called) is in most cities appointed for a term which varies from two to five years; but he may be removed from office by the mayor under such restrictions as are contained in the city charter. In some cases these provisions permit removal only with the concurrence of the city council (or the upper chamber of it); in others they allow the dismissal of the police commissioner only after a public hearing upon definite charges of misconduct or incompetence. The salaries paid to the head of the municipal police system range from about $1000 in the smallest cities to $7500 in New York. The director of public safety in Philadelphia receives $10,000 per annum, but he has charge of the fire protection department as well as of police.

Boards.—When the police system is in charge of a board, the members of the board are either elected by popular vote (in a few of the smaller cities) or appointed by the mayor. Police boards consist of three members, as a rule, appointed for a term of three, four or five years with provision for a partial renewal of the board each year. In the larger cities these members are paid for their services; in the smaller cities it is not customary to give any regular remuneration.

Bipartisan Boards.—Some cities maintain bipartisan boards, in other words their charters require that the police boards shall be so constituted as to afford representation to two of the regular political parties. This policy has commonly been defended on the ground that it affords security against the use of the police in connection with elections to the prejudice of that political party which is not in control. Polling places must be policed on election day and the police officer who is assigned to each balloting-place may naturally become the arbiter of any little dispute that arises. If he seeks to act unfairly in the interest of one political party he can accomplish a good deal in that direction. Hence it is often thought that bipartisan control serves as a guarantee of impartiality. In practice such boards commonly agree to divide responsibilities and to share advantages. The policy has proved a fruitful source of friction within the board and of political manipulation outside of it. Non-partisanship rather than bipartisanship has nowadays come to be recognized as the proper principle upon which to organize a police board.

Boards vs. Single Commissioners.—Among students of police administration there is difference of opinion as to whether the board or single commissioner system best serves the interests of the average American city. Were the functions of the police confined solely to the preservation of order and the enforcement of the laws, and were the question of expense left out of account, there would be little controversy on this point. The problems of police management and discipline require promptness of decision, firmness and clear judgment, qualities best supplied by a single controlling head if he be of proper caliber. But to secure a commissioner or director of adequate capacity in these respects a good salary must be paid, whereas in the smaller cities members of a police board can be induced to give their services freely, if the work takes only a part of their time. Moreover, the work of the police often comes into close contact with the interests of the political organizations, as for example in the strict or liberal enforcement of the licensing laws, or in the listing of voters, or in the policing of the polls at elections. It is in many quarters regarded as undesirable that a

single commissioner, appointed by the political party which is for the time being in control of the city administration, should be invested with wide discretionary powers in the handling of such matters. These appear to be the only reasons for continuing in many cities a system of police administration which is not well-adapted to the ordinary work which the department has to do.

Chief of Police.—Where the police are under the supervision of a board, a professional superintendent or chief is put in immediate charge of the administration, and the same practice is sometimes pursued where the single-commissioner plan is in vogue. Usually this official has been promoted from the lower official ranks, a man who has by long experience become familiar with every branch of routine police duty. The superintendent or chief is in charge of the city's police headquarters and the lines of responsibility for work done in all the police divisions or precincts of the city converge in him. He is paid a stated salary, usually enjoys some securities against improper removal, and sometimes receives a pension on retirement. In the larger cities the superintendent is usually assisted by one or more deputies or inspectors.

Captains.—For the performance of everyday police functions the city is divided into districts, usually called police precincts. The number of these depends of course on the size of the city, but their exact limits are defined by law or by ordinance and each precinct has its own station house or local headquarters (*see* STATION HOUSES). In the larger cities each precinct is in charge of a captain whose functions are of two sorts, strictly police duties and administrative work. Under the first head comes the responsibility of the captain for the maintenance of police efficiency in his precinct. He is the officer in full command, and directly responsible for the proper performance, within his particular area, of all the duties laid by the regulations upon subordinate officers and patrolmen. On the other hand he is the chief administrative officer of his own station house, responsible for the proper care of the building and for the maintenance of discipline in it. He supervises the keeping of the precinct records, makes all necessary reports and supervises all the clerical work done in his station house. In smaller cities the precincts are often placed in charge of a subordinate officer.

Lieutenants.—In some cities, such as Boston, St. Louis, and Baltimore, the next rank is that of police lieutenant. This officer has the captain's powers and functions whenever the latter is off duty. In many other cities there are no lieutenants and the captain's place is taken, during his absence, by a sergeant.

Sergeants.—Next in order of rank comes the police sergeant who, in smaller cities, often has charge of the station house. The post is filled by promotion from the ranks and the sergeant's duties are both police and clerical. He inspects each outgoing platoon of patrolmen and is sometimes given the duty of going the rounds to see that everything is right on the various patrols. On the other hand the sergeants take their turn at the desk in the station house where the police "blotter" or record of arrests and other incidents of the day are kept.

Roundsmen.—Some cities maintain no rank between sergeant and patrolmen. But in New York, Chicago, St. Louis, Baltimore and some other cities there are squads of officers called roundsmen who are promoted from the ranks and whose duty it is to go about in order to see that patrolmen are on their posts, one roundsman being assigned to each platoon. In Chicago there are about one hundred roundsmen in a total force of over twenty-five hundred men; in Baltimore about one hundred and thirty roundsmen in a total establishment of less than a thousand.

Patrolmen.—In the earlier stages of American police history the patrolmen were appointed in each ward on the recommendation of the ward aldermen; but this plan soon proved its inefficiency and other methods of selection were brought into use. At present the choice is made in a variety of ways, including independent selection by the police board or commissioner, competitive civil service examination, or non-competitive selection by some other municipal authority.

The duties of patrolmen are connected chiefly with the enforcement of the laws and ordinances in that area which is assigned to him as his "beat" or patrol. It is his duty to watch for violations of the law, to report them at the station house desk and to take such action against offenders as may seem appropriate.

Reservemen.—Below the rank of patrolman there is, in some cities, that of reserveman, who is really a patrolman serving a period of probation. At first he is put on night duty with experienced patrolmen and during some of the day hours is given instruction in the police regulations and in police duties.

General Powers of Officers.—In the performance of such duties, patrolmen and other police officers have the right to make arrests, in other words to take persons into custody for an alleged breach of the laws or to prevent an anticipated breach. Such arrests may be made either with or without a warrant, but the right of a police officer to make an arrest without a warrant is limited by the rules of common law and in many states by statute as well. As a rule a police officer can now make an arrest without a warrant only when a felony has been committed; or when he has reason to believe that a person has been concerned in committing a felony; or when a misdemeanor has been committed in the officer's presence. In making an arrest, either with or without a warrant, a police officer may break open doors

or windows if he is refused admittance, after having stated his authority and purpose. Forcible entries must not, however, be made on mere suspicion or for the purpose of securing evidence; and searches of houses for stolen goods may be made, as a rule, only when a police officer has a proper warrant. The use of "John Doe" warrants for the arrest of persons unknown has been much criticized in New York. In making an arrest a police officer is warranted in using so much force as is necessary to secure the custody of the offender, and to protect himself—but no more.

Special Powers of Officers.—It is the practice in some cities of the United States to use police officers in the performance of functions which are not strictly police duties; for example, in the work of sanitary inspection, in the taking of school censuses by truant officers, or in the listing of voters. In Boston, for instance, the entire work of enrolling voters is performed by the police. When police officers are entrusted with such functions, they are given special powers by law or by the city ordinances. The tendency to commit special functions to the police is not, however, so strong in America as it has been in the countries of continental Europe and the general disposition is not to give uniformed police officers any administrative duty which can be just as well undertaken by the regular officials of other city departments.

Cost in American Cities.—The cost of maintaining the police service forms a large item in the city's annual budget. In Pittsburgh the annual cost is about $1.75 per capita; in Baltimore it is about $2.25; in Chicago about $3.00; and in Boston about $3.25 Reckoned in terms of cost per square acre of territory covered, the cost per annum ranges from $30 in Pittsburgh to $70 in Boston. These differences arise partly from the greater number of police officers in proportion to the population maintained by some cities, and partly from differences in pay, equipment and pension arrangements. Pittsburgh has 15 police officers per 10,000 of population, while Baltimore has 17, Boston, 21, and St. Louis, 23. The minimum annual stipend of patrolmen in St. Louis is $900, in Baltimore $936, in Chicago $1,100, and in Boston $1,200. Similar variations appear in the remuneration of both subordinate and higher officers and there are great differences in the equipment provided by different cities in the way of station houses, patrol wagons, electric signal system, uniforms and accoutrements.

Equipment.—As a rule police officers provide their own uniforms but the materials and pattern are approved in advance by the commissioner or chief. Badges, revolvers and batons are supplied by the city at its own expense. The city likewise provides all supplies needed in the station houses. Among different cities there is considerable variation in the annual outlay for patrol and ambulance wagons, for the proper care of station houses and for the maintenance of the signal system.

Platoon System.—Both the expense and the efficiency of the police department depend to some extent upon the hours of service required from officers and patrolmen and this again depends upon the type of "platoon" system employed. Most cities employ the two-platoon system under which twenty-five per cent of the force is on patrol during the day, fifty per cent is on patrol during the night, and the remaining twenty-five per cent on reserve at all times. Under this arrangement patrolmen have very little time to themselves after giving the necessary hours to both patrol and reserve duty. The three-platoon system, which has been adopted by a few cities, lessens the daily patrol hours by decreasing both the night force and the reserve. One third of the force is on duty both day and night; one ninth of the force is held in reserve. New York City established in 1907 a new arrangement known as the five-platoon system. This plan is somewhat complicated but it requires no more than six consecutive hours of patrol duty from any officer; it gives the department a night force double that of the day hours; and it permits an adequate reserve. On the whole the New York authorities have found the five-platoon system very satisfactory.

Difficulties in Administration.—The police departments of the larger cities have very frequently fallen short of the standards set for them by public opinion and the chief reasons for this may be summarized under four heads: (1) inefficient methods of appointment and promotion commonly pursued in police departments; (2) laxity of official discipline in certain branches of the service, notably in the detective and plain clothes divisions; (3) opportunities for blackmail and extortion afforded by the police officer's power of enforcing the laws relating to saloons, gaming establishments and houses of prostitution; (4) lack of generosity in most cities in failing to make provision for retiring allowances to officers who have given the best years of their lives to the service. The scandals which were brought to light by the Lexow investigation and the Becker trial in New York and by similar inquiries in other cities can practically all be traced to one or other of these features.

Civil Service Reform.—The first of these four sources of difficulty, the inefficient methods of appointment and promotion, is the legitimate offspring of the spoils system. Where a patrolman owes his appointment to political influence or looks to this quarter for advancement, his daily work can never be performed with an eye single to the even-handed enforcement of the law. It is in recognition of this that many systems have placed the whole field of police appointments and promotions under civil service regulations (*see* CIVIL SERVICE). Where

this has been done the various competitive tests, physical, mental and otherwise have served in large measure to extirpate the vice of political patronage and thereby to allow the performance of police functions without fear or favor. On the other hand, New York and some other cities have a vicious system of suits by dismissed officers who are frequently reinstated by the courts, proceeding on the ground that a policeman ought not to be dismissed except for offenses and on evidence which would justify a conviction by a criminal court.

Detective Problem.—Many perplexing problems have been presented by the necessity of maintaining, as a division of the police department, a branch or bureau assigned to the special work of criminal investigation. The members of this division, called inspectors or detectives (*see* DETECTIVES), are detached from their regular patrol and station house duties; a large part of their time must, from the nature of their work, be performed in plain clothes; they must be given a wide latitude in determining how they may best spend their own hours of duty; so that the careful supervision of such officers becomes a matter of the utmost difficulty. As the deterrents to crime depend rather upon certainty of detection than upon severity of punishment, the efficiency of a city's police administration hinges in considerable degree upon this branch of the service.

Vice Problem.—It is to be remembered, again, that the tasks imposed upon the American police officer and the temptations set before him are far greater than those which confront his prototype in European cities. The laws relating to the liquor traffic and the social evil are more stringent here than abroad; and the profits to be derived from violations of the law are greater here than there. Police officers accordingly have it in their power, by a strict or liberal interpretation of their duties, virtually to determine the amount of income an illicit establishment will yield. This situation, so long as it continues, is bound to make the career of a police officer one that is beset from all sides by formidable temptations to serve his own pocket by infidelity to duty. In the cities of continental Europe this obstacle to police integrity is minimized by the policy of putting the supervision of such things in the hands of special officers who do not perform regular patrol or station duties (*see* POLICE, CONTINENTAL).

Need of Better Treatment.—For the quality and integrity of service which it expects from police officers, moreover, the American city rarely pays enough. Men who are required to be of unusual physique, far more than average intelligence, tactful, courageous and honest in the face of great temptations, are taken on the police establishments of many cities at less than a thousand dollars per year. Their positions are not very secure and single lapses from the straight path sometimes entail dismissal. When a long and satisfactory term of service is ended an officer may receive a retiring allowance but it is seldom adequate, and in many cities there are no provisions for police pensions at all. In New York a policeman has a right to retire on a pension amounting to about half-pay after 20 years of active service. The pension expense is considered disproportionately heavy. Along with efficient methods of appointment, therefore, must go better pay, greater securities against unjust removals and more liberal superannuation arrangements if the standards of Europe in police administration are to be reached by American cities.

See BIPARTISAN MUNICIPAL BOARDS; BOARDS, MUNICIPAL; CITY AND THE STATE; COERCION OF INDIVIDUALS; COMMISSION SYSTEM OF CITY GOVERNMENT; CONSTABULARY, STATE; COURT, POLICE; MUNICIPAL GOVERNMENT, FUNCTIONS OF; ORDER, MAINTENANCE OF; ORDINANCES, MUNICIPAL; RIOTS, SUPPRESSION OF; and under POLICE.

References: W. L. M. Lee, *Hist. of Police in England* (1901); L. F. Fuld, *Police Administration* (1910); F. J. Goodnow, *Municipal Government* (1909), ch. xi; C. A. Beard, *American City Government* (1910), ch. vi; A. C. Train, *Prisoner at the Bar* (1906); A. R. Hatton, *Digest of City Charters* (1906), 312–319, "Control of Police" in Nat. Municipal League, *Proceedings*, 1909, 157–171; W. M. McAdoo, *Guarding a Great City* (1906); Committee appointed by the (N. Y.) Senate to investigate the Police Department of New York, *Report*, 1891, commonly called the *"Report of the Lexow Committee"*; New York Bureau of Municipal Research, *Report on Business Methods of New York City's Police Department* (1910); annual reports of police commissioners and commissions. WILLIAM BENNETT MUNRO.

POLICE JURY. An elective board established in each parish in Louisiana, corresponding to the boards of supervisors or county commissioners in other states, with power to levy taxes, regulate roads, provide poor relief, etc.

See COUNTY COMMISSIONERS; SUPERVISORS.

Reference: Solomon Wolff, *Constitution and Revised Laws of Louisiana* (1910), II, 1254–1255. J. A. F.

POLICE, METROPOLITAN. The term metropolitan police first came into use in America when the legislature of New York state, in 1857, passed an act consolidating New York City, Brooklyn and some adjacent territory into a single police district and placed the control of its police functions in the hands of a metropolitan police board the members of which were appointed by the governor. This idea was borrowed from London where a metropolitan police district had been created and placed under central supervision by Peel's Act

of 1828 (*see* POLICE IN AMERICAN CITIES). The administration of the police department in the American metropolis continued in this form until 1870 when the metropolitan police board was abolished and the cities in the district were once again given direct charge of their own police departments. At the present time there is no American example of a metropolitan police system, that is to say, a system extending over two or more cities which form separate municipal units for all other purposes of municipal administration. There are, however, some examples of state control over the police of single cities. **See** POLICE COMMISSIONS AND COMMISSIONERS; POLICE IN AMERICAN CITIES. W. B. M.

POLICE POWER

The Term.—The federal Supreme Court first employed the term to indicate the otherwise undefined mass of governmental powers reserved to the states (Brown *vs.* Maryland, [1827], 12 *Wh.* 419–443), and to the present day avoids using it with reference to the legislative power of Congress. More recent constitutional developments call, however, for a further definition of the police power. From the last quarter of the nineteenth century on, the guaranty of due process of law has been interpreted as a check upon all governmental action affecting liberty and property. All such action must be capable of justification upon some theory of public interest which is both rational and regardful of individual liberty and property as rights essential to a free state. In view of this requirement the idea of the police power asserted itself by way of distinction from other governmental powers as the power which has for its immediate object the furtherance of the public welfare through restraint and compulsion exercised over private rights.

It differs from the corporate power of the state which uses public funds and property for the same purpose; from the powers of taxation (*see*) and of eminent domain (*see*) which are concerned with supplying such funds and property; from the military power which seeks to maintain national integrity against foreign aggression or domestic insurrection, and from the judicial power (including the power of civil and criminal legislation) in which public policy is a consideration secondary to the main purpose of adjusting, safeguarding and enforcing rights.

In this sense it is proper to speak of a police power of the Federal Government. When the Supreme Court says that "The power to regulate interstate commerce, great and paramount as that power is, can not be exerted in violation of any fundamental right secured by other provisions of the Constitution" (208 *U. S.* 161, 180), it recognizes that federal, like state, legislation must justify itself according to the nature of its object and purpose. And in an increasing measure Congress is using the commerce power to accomplish the same objects which the state pursues through the police power (legislation for the safety of shipping, employers' liability act, lottery legislation, antitrust law, interstate commerce law).

Fundamental Rights.—The scope and limitations of the police power are controlled by the legitimate demands of the public welfare and by the fundamental rights of the individual. The constitutions do not define the former, but contain express guaranties with regard to the latter. The most important specific guaranties affecting the police power are those relating to freedom of religion and of speech, press and assembly. They amount to a declaration that the control of religious and political opinion, formerly regarded as the most important concerns of the state, are no longer admissible objects of the exercise of governmental power. Certain statutes of New York and New Jersey declaring the teaching of the more extreme phases of anarchistic doctrine unlawful and punishable, would hardly stand the test of judicial scrutiny.

The general guaranty of due process of law relates to life, liberty and property. Of these the right to life is not apt to raise constitutional questions under the police power, since no extreme of emergency would be held to justify the sacrifice of life as a means of safeguarding the public welfare. The difference between the police power and justice is here strikingly illustrated. The main difficulty arises with reference to the use of property and civil liberty. The restraint of both is of the very essence of the police power. Their recognition as constitutional rights can therefore mean only one of two things: that the restraint shall be reasonable and that it shall serve some legitimate purpose. There have been dicta to the effect that legislation cannot be controlled by the courts as to its reasonableness. But not merely the practice but the acknowledged theory is now otherwise (148 *Mass.* 368; 179 *U. S.* 287), although the limits of legislative discretion are much wider than those of the municipal ordinance power, which even in England is, and for a long time has been, subject to judicial control.

The reasonableness of the exercise of the police power relates both to its degree and to its incidence. As regards the latter, it means that the burden of the law should fall upon some property or person bearing a causal or

otherwise intelligible relation to the conditions making the exercise of the power necessary; it is this aspect of the problem of reasonableness which is presented in the new principle of workmen's compensation. As regards degree, the principle of reasonableness means that the burden imposed shall not be disproportionate to the benefit sought to be secured.

Methods.—(1) Publicity. Measures to secure publicity (reports, notices, marks, licenses) may be so little restrictive as to leave the exercise of the right practically free; on this ground a state requirement of the posting of railroad rates has been sustained even with reference to interstate commerce (Chicago & Ry. Co. *vs.* Fuller, 17 *Wall.* 560). On the other hand the requirement that oleomargarine shall be colored pink has justly been held to be equivalent to prohibition (Collins *vs.* N. H., 171 *U. S.* 30).

(2) Simple and regulative restraint. The difference is well illustrated by automobile legislation which, instead of fixing a speed limit, merely forbids driving to the danger of the public. It is characteristic of the police power that it normally prefers some positive regulation, involving some conventional standard which tends to remove or reduce the danger of the abuse of rights on the part of those who are unskilful, careless, or unscrupulous.

(3) Prohibition or destruction. In its extreme form the police power extends to prohibition or the physical or economic destruction of vested rights of property. The policy of prohibition has found its chief application in connection with the liquor traffic where it is supposed to be justified on the ground of public morals; the courts have been divided as to its legitimacy as applied to the oleomargarine industry, but on principle absolute prohibition cannot be regarded as a legitimate measure to deal with a useful business simply on account of the danger of fraud; and the policy of legislation has voluntarily abandoned it. The economic destruction of property is frequently a consequence of prohibition; it may also result from the requirement of expenditures or the reduction of profits. The Supreme Court of the United States has decided that the regulation of railroad rates (*see* PRICES AND CHARGES) may not extend to the point of confiscation, and thereby has given effect to the just principle that the protection or promotion of a merely economic interest of the public cannot justify the entire destruction of private economic values (Railroad Commission Cases, 116 *U. S.* 307).

Legislation may refrain from imposing direct restraints or duties, yet aim to raise the standard of conduct by creating new or more stringent rules of civil liability. Employers' liability legislation furnishes a conspicuous illustration in point. This may be assigned equally to the police power and to the power of civil legislation.

Primary Public Interests; Safety, Morals, and Order.—The interests constituting the public welfare may, for practical purposes, be divided into two great classes; those relating to safety, morals and good order, and those of an economic character.

Under the former head should be classed: (a) All legislation for the prevention of crime and maintenance of peace (disorderly persons, vagrancy, riots, security of the peace, care of delinquent children and of the criminally insane). The punishment of crime belongs to the domain of justice and the detection of crime may be treated as a function auxiliary to criminal justice. (b) All legislation for the prevention of accidents and of disease (mines, railroads, ships, navigation, dikes and levees, buildings, machinery, inflammable materials, explosives, poisons, destructive animals and vermin, noxious weeds and other pests, contagious diseases and quarantine, burials and cemeteries, nuisances, adulterations, factory laws, practice of medicine and other callings affecting health and safety). (c) All legislation concerning intoxicating liquors, gambling, and vice. (d) Regulations for the maintenance of order in public places and for the enforcement of peace and quiet, especially during the customary periods of rest (Sunday laws, closing hours, etc.).

This field of the police power is on the whole clear and undisputed. If it does not concern itself with purely self-regarding conduct nor with conduct in the privacy of the home, this is probably due not so much to constitutional immunity from control as to the absence of a sufficient public interest, and above all, to the impracticability of enforcement. The position unguardedly advanced by some courts (98 *New York* 98; 155 *Ill.* 98; 26 *Colo.* 415) that a class cannot be restrained where only the safety or health of the class itself is in question, must be regarded as untenable.

There is however considerable controversy as to whether the idea of public order can be carried to the protection of merely aesthetic interest; the relative slightness of such an interest would hardly support an interference with vested rights or any serious impairment of legitimate property values. A remarkable concession to public opinion is found in the judicial recognition of the compulsory separation of races in the interest of public peace and order. As far as the schools and public conveyances are concerned this is well established, while as to the establishment of separate districts of residence the question must be regarded as open. The prohibition of mixed marriages rests on considerations of race purity which constitutes an interest *sui generis;* no similar restriction would be tolerated in the interest of the purity of religious faith or even of nationality.

Economic Interests.—These interests obviously do not affect the public welfare as

urgently as safety, morals and order. With regard to many conceivable phases of industrial regulation, the legitimacy of the police power is seriously disputed. The principal branches of legislation falling under this head are the following: trade regulations for the prevention of fraud; the control of combinations, trusts, and corporations; certain phases of labor legislation; regulation of the business of railroads, banking, insurance, and other classes of business affected with a public interest; and such instances as may at present be found of legislation for the conservation of natural resources and of sumptuary legislation. Generally speaking, compulsory measures against improvidence, or compulsory industry and improvement, are no longer regarded as legitimate methods of the police power to increase the wealth of the state.

Of these, legislation for the prevention of fraud, being aimed at practices which must be conceded to be wrongful, presents the least difficulty regarding the justification of governmental interference. As to combinations formed for the purpose of controlling prices or output or otherwise limiting competition (combination in restraint of trade), the exercise of the police power for their more effective inhibition (regulation in this field has hardly been attempted) has passed almost unchallenged. The power is exercised both by the states and by the nation (*see* SHERMAN ANTI-TRUST ACT, of 1890) and it is even lodged in cities under older charters (engrossing, forestalling, regrating).

Corporations.—Since the common law treats corporations (*see*) as the creatures of the sovereign power, their control rests upon a title of exceptional strength and not in all respects bound by the ordinary limitations of the police power. Corporations have even been held entitled to the protection of the Fourteenth Amendment (*see*) and the precise extent of their subjection to public control is unsettled (*see* PERSONS). The contention that under the doctrine of the Dartmouth College case (*see*) which pronounced the charter to be a contract (*see* CONTRACT, IMPAIRMENT OF) between the state and the corporation, the corporation should enjoy immunity from the police power of the state, has been repudiated by the courts (27 *Vt.* 140) and the doctrine has been neutralized by general reservations of power to alter, amend and repeal charters of corporations to be created subsequent to such reservation.

Qualified Property.—Another exceptional title to public control exists where property is the subject of private ownership only in a qualified manner, or where it is subject to public easements. This applies to riparian rights and navigable waters, and in some western states, under constitutional provisions, to all natural waters. The very stringent legislation for the protection of game and fish rests upon the title of the sovereign to all animals *ferae naturae*. In some respects the doctrine of public rights requires further elucidation, so with regard to water power. There seems to be no foundation for asserting it with regard to forests, and if a far-reaching policy of conserving natural resources desires to enlist the aid of compulsive and restrictive measures, the conception of the police power must be expanded to bring about a different adjustment of private rights and public welfare.

Control of Business.—The power to regulate business became a most important issue in the Granger legislation of the early seventies. In sustaining the power to fix rates the Supreme Court relied upon the idea of a business affected with a public interest. The case in which the leading opinion was written (Munn *vs.* Illinois, 94 *U. S.* 113) concerned the grain elevator business in Chicago, and the court relied upon the natural monopoly which that business enjoyed in a favored location. The power was, however, subsequently recognized with reference to grain elevators irrespective of any natural monopoly. Since the Supreme Court, in sustaining legislative railroad and elevator rates, referred by contrast to private business which the entire people have no power to control, the question as to what kind of business may be treated as affected with a public interest is one of obvious importance, with regard to which, however, the courts leave us without any guidance. Undoubtedly it includes the business of banking and insurance and certain callings which the common law has always treated as in a sense public (carriers, inn-keepers, etc.); but it is impossible to bring all these under one common head and no authoritative definition has been attempted. If a business is affected with a public interest its charges are subject to reasonable regulation (not to the point of confiscation), it may be required to render services without discrimination, and the amount and manner of service may be regulated in the interest of public convenience—an interest which does not ordinarily call the police power into action. A great expansion of the police power may be expected by further development and application of this doctrine (*see* GRANGER CASES; QUASI-PUBLIC CORPORATIONS; PUBLIC SERVICE CORPORATIONS; PUBLIC USE).

Labor Legislation.—In so far as labor legislation is enacted for the protection of safety, health or morals, it falls under a well established head of the police power; it is only where the object of the legislation is economic that a difficulty arises. The problem of labor legislation cannot be disposed of by proclaiming a constitutional freedom of contract (*see*). The term is misleading where the parties do not treat on equal terms and therefore it has not been allowed to obscure the relation between the owner of the business affected with a public interest and the public. If our courts assert such a right as against labor legislation,

this can mean only that as a matter of constitutional principle (not merely as a matter of sound economic theory, but as a consequence of the latter) the terms upon which capital shall employ labor must be the result of private adjustment and not of public control; the state may not throw its power into the balance either on one side or the other to force terms which it deems fair. This is at present the prevailing American view, and no court seems to concede the power of the legislature to dictate at its discretion either hours of labor or rates of wages. The courts are however sharply divided as to the power to control the mode of payment of wages (truck laws and weekly payment laws); and those courts which sustain the power, including the Supreme Court of the United States (*see* 183 *U. S.* 13), proceed upon the theory of the inequality of the two parties. On this basis, however, the power over wages and hours of labor could likewise be logically sustained; and the partial concession of the right of interference indicates an unsettled state of judicial opinion, corresponding to the general uncertainty as to the proper attitude and province of the state in the conflict between capital and labor. There can be no doubt that the present is a period of transition, and that there are tendencies at work which make for a recognition of the contract of employment as one affected with a public interest, and subject to a wide exercise of the police power on behalf of the economic elevation of the working classes. Such a stage of constitutional development has, however, not been reached at the present time.

Children and Women.—The full control of the state over child labor is undisputed. The status of the adult woman is not equally clear. The regulation of hours of labor for women has been sustained where a similar regulation would not be sustained for men (Muller *vs.* Oregon, 208 *U. S.* 412; Locker *vs.* New York, 198 *U. S.* 45). The Supreme Court seems to recognize a stronger power of state control over women on general principles (*see* LABOR, WOMAN'S). Such a power, exercised on purely economic grounds, may be justified upon a variety of considerations: the political disfranchisement of women, the greater difficulties in the way of their efficient coöperation, the adventitious nature of their industrial employment, their peculiar social function in the household and the family, and above all, the entire history of the status of the sex. If we claim for adult men a constitutional right of liberty as the legal expression of the established relation between the state and the individual, it should be remembered that in the past the doctrine of individualism has not been applied to women, and that their emergence from the status of dependence has been coincident with the expansion of community control. The assertion of immunity from public power therefore lacks the historic basis which exists in the case of men.

The Police Power and Vested Rights.—The prevailing theory of the police power is also unsatisfactory with reference to the protection of vested rights. It is generally believed that there can be no claim of a vested right as against the claims of the primary public interests of safety, and public morals, and that as a consequence no compensation is due where these rights have to yield to the police power. This is correct so far as the power operates by mere regulation, and it is for this purpose indifferent whether the regulation serves the purpose of safety or some economic object. But where property is actually destroyed, or regulation is so burdensome as to amount to deprivation, a difference should be made between the removal of an actual danger, and the creation of conditions simply more favorable to health, safety or morals. In the practice of legislation, the distinction is generally observed from a sense of equity, but there is no legal doctrine recognizing limitations on this basis other than the general rule against unreasonableness.

An even stronger claim of equity exists in favor of rights resting upon public grant. Acts in abrogation of licenses or franchises have been sustained on the ground that the legislature cannot bargain away the power to protect the public safety or morals. The rule is best illustrated in the revocation of lottery privileges (Stone *vs.* Mississippi, 101 *U. S.* 814). It may be conceded that there can be under no circumstances a justification for perpetual licenses or privileges in matters affecting health, safety or morals. But where the danger is not imminent and a compromise reasonable or necessary, it is difficult to see why the state in adopting some restrictive policy should be debarred from giving a guaranty against further interference for a limited time, especially where expense is incurred or other consideration given in return for such guaranty. Not only is the breach of public faith a detriment which ordinarily more than outweighs any gain resulting from an immediate change of policy, but in many instances the object of the police power could be more easily accomplished if compromise measures could be agreed upon with the assurance that they would remain undisturbed for a limited time. However, any power to make binding arrangements in abrogation of the continuing exercise of the police power would have to be carefully safeguarded, and in the absence of any such safeguards the prevailing doctrine absolutely denies such power.

See CHILD LABOR; DRUGS, PUBLIC REGULATION OF; FREEDOM OF CONTRACT; GAMBLING; HEALTH, PUBLIC, REGULATION OF; INSPECTION; LABOR, HOURS OF; LABOR, RELATION OF THE STATE TO; LIQUOR LEGISLATION; NUISANCES, ABATEMENT OF; ORDER, MAINTENANCE OF; PUB-

LIC MORALS; VAGRANCY; WAGES, REGULATION OF.

References: E. Freund, *Police Power* (1904); L. P. McGehee, *Due Process of Law* (1906); E. V. Abbot, "The Police Power and the Right to Compensation" in *Harvard Law Review*, III (1889), 189–205; P. Fuller, "Is there a Federal Police Power?" in *Columbia Law Review*, IV (1904), 563–588; W. W. Cook, "What is the Police Power?" in *ibid*, VII (1907), 322–336. ERNST FREUND.

POLICE, RURAL. Most civilized countries have a system of police organized by and directly responsible to the central government. In the English colonies in America, the only local police officer was the constable (*see*), and that is still the case in most parts of the Union, except in the cities. The municipal watchmen were commonly old, inactive and not uniformed; not till 1859 was there a regular force of disciplined police in any city in the Union. All cities and many towns now have an organized police force; but in the rural districts there is no provision for a body of responsible men skilled in detecting crime and discovering criminals, and animated from above by a directing authority. This is one reason for the great number of violent crimes, including train robberies and the looting of banks, much of which could be prevented by a rural police corresponding to the constabulary of England and Ireland. Only one state, Pennsylvania, has such a force (*see* CONSTABULARY, STATE). Members of a rural police could be made useful for various governmental purposes; they may collect statistics (*see* STATISTICS, OFFICIAL COLLECTION OF); they may act as local inspectors of health (*see* HEALTH, PUBLIC, REGULATION OF); they may serve as fire wards; they may assist in making up lists of voters (*see* VOTERS, REGISTRATION OF); one of the most striking needs of American local government is a proper provision of local police. See COERCION OF INDIVIDUALS; CONSTABLE; CONSTABULARY, STATE; DISTRICTS, RURAL ADMINISTRATIVE; JUSTICE OF THE PEACE; LYNCHING; MOBS AND MOB RULE; ORDER, MAINTENANCE OF; POSSE COMITATUS; RIOTS, SUPPRESSION OF; SHERIFF. References: F. Fuld, *Police Administration* (1904); F. J. Goodnow, *City Govt. in the U. S.* (1904). A. B. H.

POLICE STATIONS AND LOCKUPS. Local jails for the temporary detention of prisoners arrested under municipal authority exist in most of the cities and villages of the United States. They are established and supported by the city or village council, and are administered by the police authorities or the "village marshal." Most of the lockups of the United States are public nuisances, unfit for the purpose for which they are intended. The occupants of such lockups are exposed to great danger from fire and disease, and many prisoners have been cremated in them. A few model police stations exist in some of the larger cities. See PENALTIES FOR CRIME; PENITENTIARIES; POLICE IN AMERICAN CITIES; PRISON DISCIPLINE. References: *Am. Year Book, 1911*, 381–386, and year by year; Z. R. Brockway, *Fifty Years of Prison Service* (1912); F. H. Wines, *Punishment and Reformation* (1910). H. H. H.

POLICY PLAYING. See GAMBLING.

POLITICAL ARITHMETIC. A phrase indicating the application of statistics to the solution of political problems. See STATISTICS. O. C. H.

POLITICAL BARGAIN. An agreement, usually corrupt, between contending political factions or individuals by which support is given a measure or candidate in return for a like favor. See LOG ROLLING; MACHINE, POLITICAL; ORGANIZATION. O. C. H.

POLITICAL CLUBS. The political party is by nature a social institution, bringing men together and giving them a sense of fellowship and of coöperation for common ends. The scattered local Democratic Clubs out of which grew the party of Jefferson gained strength and effectiveness through their organic union into a party. The Federalists failed as a party largely because they were not thus locally organized. Men trained in the school of Jefferson formed the Whig (*see*) party and the mass of the people were thus gathered, according to similar social ideals and principles, into a national system of local clubs. The primary was a local club; the convention, a meeting of delegates from the clubs. The regular political organizations of the earlier day met, to a large extent, the social needs of the citizens. Through their committees, delegates and conventions a sense of unity was maintained between the larger and smaller political agencies. Much of this disappeared with the advent of the machine (*see*) and the boss (*see*). Aiming at their own personal profit, the few managers, bound together by selfish objects, appropriated the social opportunities of the party along with its political functions, and wielded that powerful weapon with skill and effectiveness. The local boss, bent upon his special business of controlling the voters, utilized the city saloon as a political club for the class which it attracted, and brought other social forces into line for the same practical purpose. Machine methods spread into the rural districts and party organization fell largely into the hands of aspirants for office. Mere voters ceased to be considered a vital part of the political organism; friction and antagonism between them and the managers resulted, and party disintegration followed.

Republican Clubs.—About 1885, local Republican clubs were formed with the object of promoting party loyalty and of restoring to the party what the machine had withdrawn. These clubs, while taking no share in political nominations or in the advancement of individual candidacies, made their special appeal to the young and were intended to serve as a school of party politics. Through frequent meetings for social and political intercourse, by partisan addresses and the distribution of partisan literature, strong influences were brought to bear for binding the youthful voter to the party. Innumerable clubs appeared under diverse names: Irish Republican clubs; Bohemian Republican clubs; Jewish Republican clubs; traveling men's Republican clubs; students' Republican clubs; women's Republican clubs—clubs for every race, occupation or condition. A sense of social unity and common political purpose sprang up. Following the original lines of party organization these clubs were brought together in mass meetings addressed by noted speakers and in delegate conventions. Republican leagues in city and county were gathered into state leagues, and finally, in 1898, was held the first meeting of the National Republican League.

Democratic Clubs.—A similar, though less complete, system has developed in the Democratic party. If the club ideal were realized there would be a duplication of party organization. The one, through district, county, city and state party machinery, would do the actual political work of the party and nominate its candidates; while the other, through like agencies, would seek the more definite, sentimental ends of party loyalty, social and political unity, with the active participation of the whole party membership.

Much earnest effort has been expended and for a dozen years or more annual conventions of the National Democratic League purporting to represent the general party membership have been held; but it is nevertheless probable that not one voter in a hundred is aware of the existence of such an institution. The attempt to restore to the party what machine methods have destroyed has proved futile. Mature men do not enter heartily into coöperation with an organization which holds itself aloof from direct political action.

Candidates Clubs.—Of much greater importance are the clubs that spring up during a campaign for a party nomination or election in the interest of a particular candidate. Bryan clubs, Roosevelt clubs, Wilson or Taft clubs appear and disappear as incidents of the times. Through these local and temporary organizations the party is, in a way, revitalized once in four years. Sometimes in certain states they take more permanent form. The Lincoln-Roosevelt clubs of California maintained for years a state organization and finally gained control of the state. Similar movements took place in Wisconsin under the leadership of Senator La Follette, and in Iowa under that of Senator Cummins.

Permanent Clubs.—Still another type of organization fills a significant place in the party system. In 1863 the Union League, whose aim was to strengthen the cause of the Union, was organized in New York and extended to all the large cities of the North. Though nominally the league was not partisan, it was early recognized as an aid to the Republican party, and to offset its influence the Manhatten Club arose in 1864 to give additional support to the Democratic party. These are early instances of permanent party clubs. Such institutions are now generally found in the large cities. The Hamilton and Marquette clubs of Chicago furnish meeting places for Republicans, and the Iroquois Club fulfills a like function for Democrats. Clubs of this type in addition to their mission as social centers are more or less actuated by the motive of service to the party. They entertain distinguished members of the party; give dinners in honor of party leaders; observe the birthdays of Jefferson, Jackson, Lincoln and other party saints. They are independent both of the regular parties and of each other, and they do not often enter actively into the support of special candidates or special party divisions. There are other organizations which have acquired partisan associations because of the policies they promote. The American, or Protectionist, League is looked upon as an adjunct to the Republican party; and the Reform Club, or the Free Trade League, holds a like relation to the Democratic party.

Party clubs in America are not so closely related to party as are the corresponding institutions in England. The Carleton club of London is an official Conservative organ, membership in which is a guaranty of party orthodoxy. The same is true of the Liberal club of the Liberal party.

See COUNTY DEMOCRACY; TAMMANY.

References: National Conventions of the Republican League, *Proceedings* (1898–1912); M. Ostrogorski, *Democracy and Pol. Parties* (1902), II, 286, *Democracy and Party System* (1910), 166–170; Jane Addams, *Democracy and Social Ethics* (1902), ch. vii; G. D. Luetscher, *Early Pol. Machinery in the United States* (1903), ch. ii; J. Macy, *Party Organization and Machinery* (1912), ch. xix; T. Roosevelt, "Machine Politics in New York City" in his *Am. Ideals* (1897).

JESSE MACY.

POLITICAL ECONOMY. Political economy treats of the wants of men, the activities—individual and associated—whereby they are satisfied, and the relations which consequently arise in organized society; commonly under the main divisions production, distribution and consumption of wealth. See CAPITAL AND CAP-

ITALIZATION; COST; ECONOMIC THEORY EXCHANGE; LABOR; PRICE; PRODUCTION; PROFIT; RENT; VALUE; WAGES. E. H. V.

POLITICAL LIBERTY. Political liberty, in its broadest sense includes the right to vote, hold office, form political associations, criticize the government and its policies, subject only to the ordinary law of libel. The term is often confused with civil liberty (*see*) from which, in fact, it cannot be fully divorced. In spite of the intimate connection between political and civil liberty it is well to maintain the distinction, for one may possess all the rights of citizenship, except the right to vote and hold office. These rights include freedom of the press, the rights to hold property, to sue and be sued, to buy and sell and engage in all, or nearly all, the ordinary pursuits of life. While political liberty usually implies full civil liberty, the latter, by no means implies the former. It is commonly recognized that political liberty is essential to the attainment, protection, and enlargement of civil rights. Largely on this ground the emancipated slaves were enfranchised after the Civil War. Political liberty cannot be treated in the abstract apart from the economic condition of those who enjoy it. For example, he who is economically dependent upon another may find his political liberty a name only. See LIBERTY, LEGAL SIGNIFICANCE OF. Reference: G. L. Scherger, *Evolution of Modern Liberty* (1904). C. A. B.

POLITICAL OFFICERS. See OFFICERS; ORGANIZATION; PUBLIC OFFICERS.

POLITICAL PARTIES. See CONGRESS OF THE UNITED STATES, POLITICAL PARTIES IN; under PARTY.

POLITICAL PHILOSOPHY. The philosophical study of things political does not necessarily make a separate department of knowledge, but it may. Such study implies, or seeks, a comprehensive theory, even a theory of the universe. Only comprehensive theory, whatever the immediate subject matter, can be philosophical. Wherefore, political philosophy has been defined as application of philosophical or universal ideas or principles to political matters. Still such a definition is seriously misleading, for it neglects the fact that the field studied must make its own contribution to the ideas. Thus, the true philosophy of anything cannot be the mere application of philosophical ideas to it; but rather, the intimate study, and of course the expert study, of it from a universal standpoint. In treating political matters the professional philosophers have often only applied their independently developed systems. Also, among the unprofessional there has been a certain kind of thinking regarded as philosophical because of its bold and glaring generality, if not also because of its being visionary and mysterious. But here is no reason for changing the definition.

Political philosophy must be distinguished from politics, political science and ethics, and also must be seen in its relation to history. Usually the term politics, although sometimes referring to theory, *e. g.*, "The Politics of Aristotle," has stood for the political career, its interests, methods, and rules. As responsible, then, to universal theory, political philosophy would be far from such practical politics. Political science, either in the narrow meaning of theory of government or in the broader meaning implying the study of the whole institutional life of society, affords an excellent example of the difference between science and philosophy. Characteristically, science is special; philosophy is universal. Again, science is constrained by method and by field; philosophy, being universal, is free and speculative. One cannot explain the whole except speculatively, although one's speculations must always be guided by the discoveries of positive science. Between ethics and political philosophy the distinction is quite analogous to that between psychology and sociology—the subject matter for either pair being the individual and the social, the vital and the formal or instrumental respectively; only, as always, when two things are thus paired and in antithesis, the difficulty of keeping the two distinct is very great. In closest relation, finally, to political studies, whether philosophical or scientific, must always stand the study of history. In the United States, while many thinkers upon political affairs may be said to have been philosophical, especially during the great wars, this country has not yet produced any great political philosophers. Among the great political philosophers are Aristotle, Thomas Aquinas, Grotius, Locke, Montesquieu, and Hegel. Of these up to the present time in the political life of the United States the influence of Locke has been most noteworthy.

See POLITICAL SCIENCE; SOCIAL COMPACT THEORY; RECOGNITION OF NEW STATES; and under POLITICAL THEORIES.

References: B. Bosanquet, *Philosophical Theory of the State* (1899), I, II; W. A. Dunning, *Hist. of Pol. Theories* (1902), Introduction; C. E. Merriam, *Am. Pol. Theories* (1903); W. W. Willoughby, "Value of Pol. Philosophy" in *Pol. Sci. Quart.*, XV (1900) 75–95, "Pol. Philosophy" in *S. Atlantic Quarterly*, V (1906), 161–175; J. W. Garner, *Introduction to Pol. Science* (1910), 15.

ALFRED H. LLOYD.

POLITICAL POWER. This phrase is often used by jurists and publicists in contrast with judicial powers. In the United States the conduct of foreign affairs is given to the executive branch of the national government and in the

exercise of these function it acts in a political capacity. The President may recognize a new state or a new government, or he may concede, or refuse to concede, belligerent rights to insurgents against a foreign state or government. His act is final and as a political act is not reviewable by the courts. In the case of Williams *vs.* Suffolk Ins. Co., the Supreme Court said:

> When the executive branch of the government . . . shall . . . assume a fact in regard to [the] sovereignty of . . . any country, it is conclusive on the judicial department . . . . It is enough to know that in the exercise of his constitutional functions he has decided the question.

The same principle obtains with reference to certain acts of the legislative branch, which the courts will not review because done in the exercise of political powers; *e. g.*, the decision by Congress as to what government is the established one in one of the states of the Union is not reviewable by the courts (Luther *vs.* Borden, 7 *How.* 1).

See Executive and Judiciary; Judicial Power; Judiciary and Congress; Luther *vs.* Borden.

References: J. B. Moore, *Digest of Int. Law* (1906), I, 243–248; 743–5; G. G. Wilson, *Ins. Law* (1900), 26–31; Williams *vs.* Suffolk Ins. Co. (13 *Peters* 415); Luther *vs.* Borden, 7 *How.* 1. J. S. R.

POLITICAL QUESTIONS AND JUDICIAL AUTHORITY. The courts will not seek to interfere with the political branches of the government in the determination of so-called political questions. Naturally the courts will not seek to pass upon the mere advisability of legislation or upon the wisdom of executive action within the scope of constitutional authority. Beyond judicial influence are such matters as the determination of the extent and limits of the United States. "A question like this, respecting the boundaries of nations, is," said Justice Marshall in the case of Foster *vs.* Neilson (2 *Peters* 253). . . . "more a political than a legal question, and in its discussion, the courts of every country must respect the pronounced will of the legislature." Of a similar character are questions concerning the existence of war, the neutrality of the nation, the validity of the ratification of a treaty by a foreign power, the recognition of ambassadors or other diplomatic representatives, the admission of a state into the Union. The court will accept the decision of the political branches of government as to which of two opposing parties or powers in a state is the legal state government (*see* Luther *vs.* Borden). The question whether the basis of apportionment of representatives in a state legislature conforms to constitutional requirement is a matter for judicial decision.

See Courts and Unconstitutional Legislation; Executive and Judiciary.

References: S. E. Baldwin, *Am. Judiciary* (1905), 34–41; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 157; Luther *vs.* Borden, 7 *How.* 1; Foster *vs.* Neilson, 2 *Pet.* 253; The La Ninfa, 75 *Fed. Rep.* 513; W. W. Willoughby, *Constitutional Law of the U. S.* (1910), ch. li. A. C. McL.

POLITICAL SCIENCE

Definition.—Political science treats of the state and of government, usually the national state, and government by representatives. Any careful consideration discloses the fact that in modern times the conception has changed, not only of the state but also of science. Only in very exceptional cases do we find today a city state like that which Aristotle had primarily in mind in the days of Athenian greatness. Most modern states include wide reaches of territory with many cities and with populations so large and scattered that a pure democracy of the ancient Athenian type would be for physical reasons an impossibility. Representative government becomes a necessity.

Until late in the last century the scientist gave his attention primarily, whatever his field of research, to the classification of his information largely by external forms, as the botanist and zoölogist busied themselves primarily with the identification of genus and species. Today, however, the student of living nature, under the influence of the doctrines of evolution, studies rather the principles of origin and growth; he has become an embryologist, an histologist. The student of politics also is turning his attention to the principles underlying changes in form and we read of social psychology and the growth of constitutions.

The field of political science is the origin, nature, form, and activities of the state. It includes a consideration of the sovereignty or the ultimate power and authority of the state, of the government in its various forms, and of the functions and activities of the government and its modes of action.

Premises and Material.—Inasmuch as the state is made up of human beings, as its work is performed by them and upon them, the premises upon which the political scientist must rest in drawing his conclusions differ materially from those of most of the natural sciences. The astronomer, the physicist, the chemist are dealing with physical matter, physical energy, the laws of external nature. The

premises of the political scientist are entirely different. He deals first and primarily with men and with men in action in the state.

States progress, societies change under the influence of laws. Individuals as citizens are profoundly affected by the acts of government and they, in turn, bring influences to bear upon the government. All new political ideas, all political plans, find their origin in the creative mind of some individual citizen, and every act of government is determined by some human motives. The most important premises, then, for the reasoning of the political scientist are the leading human motives as they come into play to determine the acts of the rulers or of the citizens. Human inertia, mental and moral, human self-interest, hero worship, patriotism, religion, love of humanity—all these motives and many more, statesmen count upon in carrying out their plans and upon a knowledge of these motives rests the success of statesmen.

Inasmuch as the actions of men, following their various motives, are largely determined by the circumstances in which they live, by external nature—climate, the fauna of a country, its flora, its topography—these, also in their workings upon men, become premises for the reasoning of the political scientist. And as not only external nature and the individual, but also social and political institutions within the state and other political societies outside, exert their influences upon citizens and rulers, these institutions also become premises upon which the political scientist must base his reasoning.

Methods: Introspection.—From the consideration of the premises, it is evident that the methods of study in political science must differ from those of the physical sciences. We can often judge the motives, and in consequence the probable actions of others, best by mere introspection, by thinking what we should do in similar circumstances, then assuming that others will probably do likewise. Any such method, however, is necessarily inaccurate compared with the exact tests possible in physics or chemistry. When, however, this method of reasoning is applied to large groups of individuals, political parties, or nations, the test is likely to be fairly accurate, provided also that a number of persons have frankly joined in making the test, each giving his own judgment.

Comparative Studies.—Frequently, also, by the use of statistics, we may test the acts under different circumstances of large numbers of people, reasoning from their acts to their motives which have been influenced by specific external circumstances. For example, the influence of the weather, of the seasons of the year, of a depression in trade, and similar phenomena upon individuals may be shown by the statistics of suicides, of crimes of various sorts, the votes in elections, and other statistics which admit of similar comparisons. This method of studying human motives and actions is often accurate enough when large numbers of people are considered to justify prediction within reasonable limits.

A study of the laws of different countries under different circumstances, or a study of the history of our own and foreign countries, may also fairly justify conclusions regarding the probable effects of laws if passed in our own country. If the study of history and of comparative politics is sufficiently extended, we often may reach valuable conclusions.

Experiment.—Inasmuch as we are dealing with human beings and with fellow citizens who also have a voice in determining the actions of the state, it is not possible to make experiments in the study of political science with the same degree of definiteness and completeness as may the student of physical science. The observation of laws in different countries, or in different localities in one country or at different times, and the study of statistics as before indicated, may in part take the place of experiments. Sometimes it is practicable even to make some direct experiments, especially under a federal government such as that of the United States. Laws may be passed applicable to certain localities, or to certain lines of industry, and from the effects of these laws some general conclusions may be reached. For example, from the paying of a bounty upon the production of beet sugar, which from the nature of the case would be applied only here and there in different localities, we might reach some general, not final, conclusions regarding the effect of a bounty system. Likewise tests may be made of the effects of punishments of various kinds upon criminals. Inasmuch, however, as the conditions cannot be so positively fixed as in the experiments in physics and chemistry, and inasmuch also as one of the important elements entering into political experiments is variable human nature, our conclusions cannot be drawn with the same degree of definiteness as is possible in those sciences.

Relation to Other Sciences; Psychology.—Inasmuch as the political scientist is dealing primarily with human motives and human actions, it is evident that psychology, as the science dealing primarily with the human mind, will furnish him much material. Indeed, as the science of psychology develops and as the psychologist learns to explain with greater accuracy the movements of the human mind, the political scientist may rely upon psychological principles with greater certainty for his conclusions regarding the acts of men in the special field of politics. Not only the political scientist who is seeking to determine the scientific laws by which states are governed, but even more perhaps the practical statesman in his activities in the fields of legislation, administration, and judicial decisions, will make

practical use of the investigations of the psychologist.

Biology and Physiology.—The nature of the state, or the welfare of any individual state, is largely dependent upon the number of its inhabitants and upon their physical condition. In order that vital statistics may be accurately interpreted, or that the probable effect of war, or climate, or certain laws, may be wisely judged, material needs to be drawn from the study of biology, physiology and the allied sciences. Likewise, statesmen, in the application of political principles in actual legislation and administration, may well learn from these sciences how they may strengthen the state by taking measures to increase the length of life of the inhabitants, by insuring a larger birth rate, or by promoting the efficiency of the working inhabitants through improving the health of the community. These sciences, then, that deal directly or indirectly with human life from the physical view-point furnish material for reasoning in political science.

Statistics, History, Comparative Politics.—As has already been intimated, in the studies of statistics, history and comparative politics will be found much material upon which the political scientist may base conclusions. In practically all of these sciences his reasoning must be merely reasoning by analogy; but even so, the conclusions in many cases may be positive enough to justify general statements on the part of the scientific student of political science and action on the part of the statesman.

Economics.—Material welfare, wealth, the principles of the production, distribution, and consumption of wealth, are also important factors in determining the welfare or progress of the state. It is perhaps scarcely too much to say that the majority of the problems of the statesman bear directly upon, or are influenced directly by, the economic welfare of the citizens. In consequence, in economics also the political scientist will find much material.

Anthropology and Sociology.—The sciences of anthropology and sociology, dealing with the development of human society and with all human society conceived as a unit, likewise furnish material to the political scientist. These two sciences deal with human society in general; political science with simply one type of society, or with simply one phase of society, that which has to do with governing. Their more general principles are often applicable in the narrower field of political science.

Ethics and Religion.—These two disciplines, ethics and religion, must also be of great importance to the political scientist. The statesman has frequently found the church his most potent instrument in influencing the political actions of the citizens. Invariably he must make and execute his laws so as not to go counter to the sense of right and wrong of the great body of citizens, as shown in the field of morals and religion. The political scientist, therefore, in his study of the principles by which citizens are to be governed, must be thoroughly conversant with the principles of morals and of religion as understood and applied by the citizens of the state; otherwise his conclusions are likely to be wide of the mark.

It will be seen from the relation of political science to the few sciences named, and to geography, geology, botany, zoölogy, and others, that the same facts which belong to many of these other sciences belong also in the field of political science. The political scientist, however, makes a different use of the facts from that made by the scientists in the other fields. He uses the facts and the laws of the other sciences to enable him to draw conclusions regarding the ways in which citizens are and may be governed, and that use is the only one, strictly speaking, in which he is interested as a political scientist.

Laws of Political Science.—From the nature of the premises which the political scientist must use in his reasoning it becomes at once evident that he cannot draw conclusions and formulate principles or laws that can be expressed in the same definite terms as the so-called laws of physics or chemistry. Neither can he predict future acts of the state or the effect of certain acts of government with the accuracy with which the astronomer foretells an eclipse, or the physicist the effect of the application of the power of steam in an engine, or the chemist the effect of the addition of a chemical element to other elements. The laws of political science must be stated in general terms. They show tendencies in the state. In judging the effect of any act of government, the political scientist may indicate with practical certainty some but not all of the results. Inasmuch as he cannot control all the acts of the citizens, or all of the influences that may be brought to bear upon the citizens, he can never predict with absolute certainty any future political event. As, however, he becomes more and more familiar with the other sciences that deal more or less directly with human action in different fields, as he becomes more experienced in dealing with citizens, and as he becomes more familiar through his study of history, economics and statistics with the acts of citizens in different states and at different times, he can with greater certainty tell the probable results, so that relying upon his principles the statesman may well venture to take positive action, feeling assured that by so doing the welfare of the state will be promoted. His conclusions are definite enough, so that we may well speak of political science as a true science upon whose principles reliance may be placed.

The political scientist properly studies, not merely what the state is and what the state does, but inasmuch as the state through its

activities promotes in many ways the welfare of its citizens, he may also consider what the state should do in order best to promote the welfare of its own citizens or the welfare of humanity. No state exists to itself alone. Therefore the political scientist must not only consider existing states in their sovereign control over their citizens, in their independence of one another, and in their international dealings, but it is also well within his province to look forward to see if he may discover principles in accordance with which the various states may so improve their relations with one another as to obviate the evils of war, and eventually, perhaps through a single world state, to secure in the future continued progress and betterment of the welfare of humanity. Certain it is, if the statesman is to do his work best for the promotion of the welfare of the citizens of his own state as well as for that of humanity at large, he must have clearly conceived ideals of what the state may hope to attain. It is not the least important business of the political scientist to formulate such ideals and the principles by which they may be realized.

See Political Economy; Political Philosophy; and under Political Theories.

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Jeremiah W. Jenks.

POLITICAL THEORIES, ANCIENT AND MEDIÆVAL

Importance.—American interest in political theories of ancient and mediæval times lies in the fact that the political theories advanced by the Americans at the times of the Declaration of Independence and of the Revolution had their origin among the ancients and were commonly advanced by mediæval writers.

Plato.—The first speculation as to the nature of the state that we have is to be found in the Dialogues of Plato, particularly those entitled *Protagoras* and the *Republic*. In both of these Plato represents the Sophists as saying that the state had its origin in a mutual compact among men to abstain from doing wrong to each other and tnat out of this grew our laws. In the *Republic*, however, Plato gets away from an examination of the state as it is and indulges in a fanciful picture of a state as it ought to be—an ideal communistic commonwealth run by the philosophers. In the *Laws*, written at a latter date, he is far more practical, but even in this Dialogue he shows that he is an idealizing moralist rather than a publicist.

Aristotle.—His pupil, Aristotle, had a much more anaytical bent. He studied carefully the constitutions of nearly two hundred Greek states and with such a fund of information he wrote his *Politics*. Though in this work he constantly shows his debt to Plato, Aristotle is in the main severely practical and devotes his energies to a scientific examination of the nature of the state. Its origin he finds in the natural impulse of man to associate with his fellow man, and its growth, in the household, the village and the union of villages. In its beginning it was for satisfying the physical needs of man and in the height of its development it was to enable him to enjoy the complete life. Ultimate power rests in the whole people who, for the ordinary purposes of government, elect magistrates to do the work. He carefully analyzes the causes for the overthrow of states by revolutions, but he formulates no principle that the governed have a right to overthrow governments when subversive of the ends for which they were established. A common cause for revolutions he finds in the desire for equality, and he maintains that peace reigns where equality exists, but he preaches no abstract doctrine of political equality.

In his treatise on *Rhetoric* he vaguely touches on something somewhat akin to the "natural law" of later times when he says: "Natural justice is law because it is right; conventional justice is right because it is law." It remained for Zeno and the Stoics shortly after Aristotle's time to elaborate the doctrine of the equality of men and to declare that law and justice sprang from man's reason and not from convention or compact. On the other hand their opponents, the Epicureans, characterized the state as an organization of men to insure safety, resting upon a convention or compact of individuals.

Cicero.—Cicero in his *Republic* is much shocked by this utility notion of the origin of the state held by the Epicureans and in this work and in his book on the *Laws* he eloquently describes justice and natural law as the foundation for the origin of the state. He lays down the natural equality of human nature and declares that from the eternal natural law come the natural rights of man. Laws made by a people or a prince should not be contrary to natural law. The state itself springs from the natural association of the family and is best when it affords every citizen some share in its control.

Seneca.—It remained for Seneca in his *Letters* to picture for us that idyllic state of nature which became so common in the theories of the eighteenth century. In nature man was in a state of innocence, he lived with his fellows in peace and happiness, owning property in common and having no coercive government. Man became corrupt and the institutions of society, private property and coercive government were set up as remedies for his vice.

Roman Lawyers.—The Roman lawyers such as Ulpian, Florentinus and Gaius took up these notions and in their legal treatises declared that by nature all men are free and all men are equal. Taught by natural reason and pressed by the needs of life they set up certain other rules or civil laws for the government of themselves. The people are the one ultimate source of all political authority. The declaration of Ulpian that the will of the prince was law was modified by the added statement that it was so because the people had conferred his authority upon him. The theories of the Roman lawyers as to natural law and a state of nature, the relation of civil law to natural reason, and the ultimate source of authority in a state being in the people, exercised the greatest influence on subsequent political theory. This was not so much because their contributions were original as it was that their treatises formed the text books for the study of law during the Middle Ages.

The Church.—Another foundation for mediæval political theory was the New Testament. Such political theory as is to be found in it shows a striking similarity to the theories of the Stoics, Cicero and the Roman jurists. It does not mean necessarily that the Jews borrowed from them but rather only gave expression to theories which had spread widely over the Mediterranean world. Both St. Peter and St. Paul, in some noteworthy passages, preach absolute submission to the civil authority because the ruler is God's servant. On such foundations as these the early church fathers built their theories. The most important of the fathers, St. Augustine, accepted generally the doctrines laid down in Cicero's *Republic*. To them he added the theory that there was a general pact of human society to obey kings, and thus he put into a sweeping generalization an idea that had been hinted at by his predecessors. He further stated that if a ruler makes a law contrary to God, hence to divine and natural law, he is not to be obeyed.

Middle Ages.—The political theorists of the Middle Ages took the theories of the Roman jurists and the church fathers, combined them with such democratic ideals of government as had been brought in by the Germanic races, and, by elaborating and expanding them, were responsible for the production of the political theories of the seventeenth and eighteenth centuries. In the conflicts between the emperors and the popes, the church writers in particular enlarged upon the theories that governments are instituted by compact; that their powers rest on the consent of the governed; and that the people have the right to overthrow them. In opposition to them the supporters of the emperors advanced the theories of the divine right of kings, passive obedience and non-resistence. John of Salisbury in his non-controversial work, the *Polycraticus*, advocated the doctrine of tyrannicide. The direct influence of Greek writers on the theorists of the Middle Ages is not to be found until the thirteenth century when Aristotle began to be studied. St. Thomas Aquinas followed his teachings with regard to the origin of the state, though he retained the doctrines of the Roman lawyers and the church fathers with respect to natural law and natural rights.

Marsiglio.—The most Aristotelian writer of the Middle Ages, however, both in method and in doctrine, was Marsiglio of Padua. He may be said to have abandoned the somewhat fanciful state-of-nature theories so common before his time and, with Aristotle as a basis and the conditions in the Italian cities and the Empire to draw from, to have worked out in his *Defensor Pacis* a theory of the state which stands unique in the Middle Ages. Throughout he intended to found his theories on historical precedents and on conditions prevalent in his own time. He started with no compact theory of the origin of the state, and with no theory of natural rights, but without them he developed the doctrines of the sovereignty of the people, the responsibility of the prince for his acts, the right of the majority to rule, a system of representation, the theory of toleration, and the absolute subordination of the church to the state. Other theorists of the same period, like William of Ockham for example, began with the "state of nature" theories of the origin of the state and came to the same conclusions as Marsiglio regarding the power of the people in the state. They could not, however, go to the extremes that the former did in declaring that the church was merely a part of the state. They were churchmen, even though for a time they had turned to the service of the emperor, and as churchmen they advanced theories which had been

used earlier by the church to show that the temporal ruler was a mere creature of his people. Consistency was not one of the qualities of the mediæval theorist.

After Marsiglio's time the "back to Aristotle" movement became so strong for a while that under the leadership of such men as Æneas Sylvius it seemed as if the scorn for things mediæval would wholly destroy the influence of the distinctive political theories of the Middle Ages. During the Conciliar Movement, the Protestant revolt and the wars of religion, however, they and their authors were appealed to with renewed enthusiasm and through this means they became the foundation for the works of Hooker and his successors.

Nicolas of Cusa.—Nicolas of Cusa during the time of the Councils combined the mediæval theories into a complete system and adapted it to the spirit of the new age. "Since all men are by nature free, then government rests on the consent of the governed." The people or their representatives make the laws and the ruler receives his power and authority by their consent. Thus he proceeds deriving one doctrine from another as he goes along. Though his influence was slight, it was the fate of the theories which he put together to live on into the modern age. In the wars of religion in France they were put to use particularly by those who wished to attack the royal authority. The modern age of systematic political theory may be said to have begun with Hooker who, as a churchman, was undoubtedly familiar with the theories so largely advocated by the ecclesiastics of the Middle Ages.

Machiavelli.—Standing at the close of the Middle Ages and at the opening of modern times is Machiavelli. His *Prince* was a study in the practical politics of his time, and therefore does not properly belong to the realm of political theory. The object of his book was to tell a ruler how to run his government. By way of introduction he does go into the question of the various kinds of governments, following Aristotle pretty closely, but he does not speculate as to their origin, as to the nature of the sovereign power and like questions. Such matter was foreign to his purpose. He accepted the absolutist state of his day as an accomplished fact and did not concern himself as to how or why states came into existence. In spite of its purely practical character, however, the *Prince* is usually treated in works on political theory, probably because of the wide reading which it has had and because of the rather low standard of conduct in politics which it set up for rulers.

See POLITICAL PHILOSOPHY; POLITICAL SCIENCE.

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POLITICAL THEORIES OF AMERICAN PUBLICISTS, EARLY

Original Theories.—American political and constitutional practice has been responsible for the introduction and elaboration of novel and fundamental principles of government and jurisprudence. The list of original thinkers in the field of political philosophy in this country is, however, not a long one. During the earlier colonial period political speculation was, in the main, but a reflection and application to local conditions of the constitutional and theological political theories that had been developed in England. During revolutionary times the constitutional relations of the colonies to the mother country, and the ethical and legal basis of revolutionary resistance to oppression furnished the chief topics of political discussion. But here, too, a sufficient supply of arguments was found in the writings of English philosophers and especially of John Locke. In the so-called critical period from 1781 to 1789 the task of founding an efficient central power absorbed the political energies of all vigorous minds but the problem was sought to be solved rather upon the basis of what was desirable and practically obtainable, than by a recourse to abstract political theories. Despite this lack of pronounced originality of doctrine there were, however, a number of American political writers who deserve particular mention by reason of the vigor and courage with which they stated their views, and the actual influence upon events which they exercised.

Colonial Period.—In the earlier colonial period political philosophy and literature was practically confined to New England and especially to Massachusetts. The influence of Puritanism upon the development of democratic ideas is shown in the writings of such men as Roger Williams, John Wise and Thomas Hooker.

Revolutionary Period.—During the revolutionary period the writers whose names stand out most prominently are Otis, Hopkins, Du

laney, Dickinson, Samuel Adams, Wilson, Hamilton, Boucher, Paine, and Jefferson. James Otis (*see*), by his oration in 1761 in the superior court of Massachusetts against the validity of writs of assistance, "breathed into this nation," says John Adams, "the breath of life," and from this time he became a leader of the public opinion which was, before long, to call for an open resistance to those demands of England which were conceived to be tyrannous. The doctrine declared was that acts of Parliament contrary to right and justice and to the inherited privileges of Englishmen are unconstitutional and void and need not be obeyed. In his *Vindication of the House of Representatives*, published in 1762, and his *Rights of the British Colonies Asserted and Proved* (1764) Otis stated and defined still more fully the views of the aroused colonists. Stephen Hopkins (*see*), Governor of Rhode Island, in 1764 in his *Rights of the Colonies Examined*, while admitting the power of Parliament to regulate the trade of the British empire as a whole, denied its right to levy special taxes upon the American colonies. The pamphlet was republished in nearly every colony, and profoundly influenced the constitutional arguments advanced by the Americans. Daniel Dulaney, a prominent Maryland lawyer, in a pamphlet published in 1765 and entitled *Considerations on the Propriety of Imposing Taxes on the British Colonies, etc.*, attacked especially the British doctrine that the American colonies were "virtually represented" in the English Parliament. But, during the period from 1767 to 1775, the most influential writer was, beyond all doubt, John Dickinson (*see*) who represented Pennsylvania in the Stamp Act and Continental Congress. Not only was he the author of the celebrated *Letters from a Farmer in Pennsylvania*, but, by drafting the Declaration of Rights and the Petition to the King for the Stamp Act Congress, and, in 1775, *The Declaration by the Representatives of the United Colonies of North America*, obtained for himself the title of "Penman of the American Revolution." He later prepared the first draft of the Articles of Confederation.

The most voluminous writer of his time was Samuel Adams (*see*), but as Tyler points out, in his *Literary History of the Revolution* (II, 2) every theory which he wrote was for some immediate practical purpose, and not for the elaboration of any general principles of political rights and action. Possibly the most remarkable of the productions of his pen was the *Declaration of the Right of the Colonists*, adopted in 1772 by the citizens of Boston. This declaration was divided into three parts dealing respectively with the national rights of the colonists as men, their rights as Christians, and their rights as subjects. Adams's early published *Appeal to the World* (1769) also deserves mention.

James Wilson (*see*) was a commanding figure in the Convention of 1787 standing, as he did, for a strong central government which should operate directly upon individuals rather than upon the states, and one democratically founded upon the consent of the people, and supported by their approval. His only contribution to the literature of the early revolutionary period was, however, the pamphlet entitled *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, in which the central argument was that the American colonies were bound to the empire only through their allegiance to the British Crown, and were, therefore, not subject to the control of the Parliament. Alexander Hamilton (*see*) also has a place among the early American publicists by reason of his *Full Vindication of the Measure of the Congress from the Calumnies of their Enemies* (1774), his *The Farmer Refuted* (1775) being an answer to a series of letters that had appeared over the signature "A Westchester Farmer," and his Remarks on the Quebec Bill (1775) and his essays published under the noms de plume "Publius" and "Continentalist."

As a representative of the Loyalists the clergyman Jonathan Bucher deserves chief mention. Thirteen of his sermons preached in America between 1763 and 1775 were later published (1797) under the title *Views of the Causes and Consequences of the American Revolution*. The traditional doctrine of divine right, of obedience, and of the union of church and state here found vigorous restatement.

Upon the purely Revolutionary side the most influential writer of the time was Thomas Paine (*see*). In his *Common Sense* published in 1776 he preached the doctrine of democracy and open resistance to Great Britain, in phrases which appealed directly to the people, and the effect was undoubtedly great. "It bursted from the press," a contemporary declared, "with an effect which has rarely been produced by types and paper in any age or country." During the progress of the war, Paine published in installments *The Crisis*, encouraging, exhorting and counselling the patriots in their struggle for freedom. Paine's *The Rights of Man*, published in 1791, as an answer to Burke's *Reflections on the French Revolution*, belongs rather to the history of English than to American political literature.

The writings of Jefferson (*see*) which belong to the Revolutionary Period include his *Summary Views of the Rights of British America*, his *Proposed Instructions to Virginia Delegates*, adopted by the Virginia Legislature in 1775; and, of course, the *Declaration of Independence* (*see*). This last production has been criticised for its lack of originality, and for the inaccuracy of some of the statements, but, judged by its purpose, and by the success with which that purpose was achieved, it must ever rank among the greatest of state papers.

Critical Period.—Concerning the political writers of the "critical period" from 1781 to 1789, and of the early years under the Constitution, little more than the mention of their names is possible. The doctrines of the more important of these publicists—Jefferson, Madison, Hamilton, Wilson, Jay, and others—receive treatment elsewhere in this work.

Mention must be made, however, of the collection of papers known as *The Federalist* (*see*). These essays, for the most part by Hamilton and Madison—a few being by John Jay—prepared as an argument for the adoption of the Constitution of 1787, constitute not only an invaluable contemporaneous interpretation of that instrument, but, by the arguments which are advanced in proof of the necessity for a stronger central government, and the wisdom of the proposed plan for securing this end, furnish one of the ablest practical treatises upon constitutional government that has ever been written. A word, too, should be said regarding the writings of John Adams. Adams' *Dissertation on Canon and Federal Law* (1765) and his *Thoughts on Government* (1776), as well as his *Report on the Constitution and Form of Government for the Commonwealth of Massachusetts* (1779), belong to the antenational period; but his *Defense of the Constitutions of Government of the United States of America* (1787–88), and his *Discourses on Davila* (1790), belong to the constitutional period. The former of these works is a defense of the constitutions adopted by the American states against the strictures of Turgot—a defense which eulogizes their system of checks and balances. Adams's writings of this period are strongly in support of an aristocratic policy, and furnished abundant material for criticism from his enemies.

Early Constitutional Period.—In 1803 St. George Tucker in the first volume of his edition of Blackstone's *Commentaries* discussed generally, the nature of the new Union, and ably defined the state rights (*see*) and compact theories (*see* Social Compact Theory). In 1804 was published James Wilson's law lectures delivered at the College of Philadelphia. Here we have a serious attempt to develop a philosophical, legal and political system. The collected writings of Wilson were published in two volumes in 1906.

Other early commentaries on the Constitution were the various writings of John Taylor (*see*) of Caroline county, Virginia, Thomas Sargeant's *Constitutional Law*, Thomas Cooper's *On The Constitution*, and Rawle's (*see*) *View of the Constitution*. Of a little later period were Kent's (*see*) *Commentaries*, the speeches and papers of Webster (*see*) and Calhoun (*see*) and Story's (*see*) *Commentaries*. Of these writings, those of Calhoun stand out prominent in the field of pure political theory. Granting his premises, his conclusions logically follow. He it was who by his exposition of the indivisibility and inalienability of sovereignty, and by his clear cut distinction between a sovereign federal state (*see*) and a confederacy (*see*), in which the individual compacting states remain severally sovereign (*see* State Sovereignty), forced the abandonment by the nationalistic school of the doctrine that, granting the original sovereignty of the states, and that the Federal Constitution was a product of an agreement between them, or of their respective peoples, it could still be held that they had forever alienated their sovereignty to the National Government.

See Revolution, American, Causes of; State Sovereignty.

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W. W. Willoughby.

POLITICAL THEORIES OF AMERICAN PUBLICISTS, RECENT

Introduction—The limitations of a treatise which deals with men still living and with work not yet proved by time are patent. Some few writers there are, indeed, whom we may with confidence place high on the list of recent American publicists and whose work we may fairly attempt to estimate. Moreover, in this attempt, it is possible to survey roughly the main channels of our latter day political thought. Few generalizations of value, however, are practicable. Every month a new growth of publicists—real, quasi and pseudo—appears among us, too numerous to permit adequate mention of their work. They can only be catalogued and that superficially. The restraints of space here forbid an exhaustive list even of books of merit. The thorough student must always scan the current bibliographies, such as those of the *American Political Science Review*. And even they must be supplemented by library catalogues and publishers' lists. This article is but a summary introduction to a subject too broad and near at hand for complete appreciation.

Historians of Political Theory.—Political theory has both an historic and a systematic side and our estimate of American publicists may well begin with the historians. Our chroniclers are few in number but of excellent quality. William A. Dunning and Charles E.

Merriam need not shun comparison with their most noteworthy European contemporaries. The former's *History of Political Theories, Ancient and Mediæval* (1902), and *History of Political Theories from Luther to Montesquieu* (1905), are indispensable. In a concise but thoroughly intelligible form they afford an historical summary of the political theories of the western world to the middle of the eighteenth century. Dr. Merriam, in addition to a *History of the Theory of Sovereignty since Rousseau* (1900), has written a *History of American Political Theories* (1903) which deserves a high place beside Dunning. The book is accurate, and, as far as it goes, discriminating. The limits of Merriam's field accentuate, however, a difficulty one perceives slightly even in Dunning. Political theory is not merely an academic pastime; it permeates economics and sociology, even in their applied forms. Furthermore, it ceaselessly influences and becomes law, especially in America. When Merriam's book appeared his omission to make clear this intimate connection between theoretical and practical politics was at once noted. Even though the wider field may not be covered, the student should be warned that American political theory embraces not only doctrines embalmed in publications under that title, but, as well, living principles of our political existence expressed in constitutions, statutes and judicial opinions and even in the utterance and in the conduct of our unofficial political leaders.

Indeed, the most noteworthy theories of American publicists have been the very ones which now are commonplaces of our practical politics and constitutional law. True it is, Americans did not originate the doctrine of separation of powers, which obtains—though far less than many publicists suppose— in our government. Nor did we first conceive the principle of a law of superior obligation, a constitution, binding the legislative as well as the executive and judiciary and dependent for its authority directly upon the electorate. These ideas were born in the minds of old world theorists. But that our publicists have elaborated them and put them into practice, makes our chief claim thus far upon the attention of students of politics.

Theorists.—Yet our recent publicists, in the narrower, speculative sense of the term, have not been idle. Their activity and achievements, however, have been somewhat concealed from general notice by the character of the work done. No peculiar and startling doctrine has been enunciated. Old theories have been elaborated, applied, distinguished. New problems not confined to America have been considered. And the results are no less worthy of attention because the lure of special novelty does not appear.

First in point of time among recent American publicists in Francis Lieber. His *Manual of Political Ethics* was published in 1838, but he was active throughout the war period and lived till 1872. Lieber led the defection of American theorists from the idea, commonly termed "Jeffersonian," that the least government is the best. His views, indeed, are fairly typical of the modern tendency toward paternalism, a tendency at times openly and generally advocated, but more often evidenced by a disposition to deal with specific cases on their own merits, without any individualistic prepossession whatever. Lieber boldly maintained the legitimate objects of the state to include all those things of importance to man which he cannot, should not or will not obtain by himself. Thus, if an individual cannot himself secure needed medical attention the state is bound to provide it. Although he is able and willing privately to redress wrongs, out of regard to the community the state must insist upon acting for him. Individuals, as such, might conceivably maintain roads and establish common schools, but they can and do avoid the task and therefore the state should assume it.

These views of Lieber's have been followed and amplified by his successors. Thus W. W. Willoughby, writing on *The Nature of the State* (1896), concludes that state functions embrace not only essentials, that is, the protection of the state against foreign interference, the preservation of national life and the maintenance of internal order; but also non-essentials, that is, the moral and economic interests of the people. Some of these latter, like the conduct of gas and electric plants which might be left to private initiative, he terms socialistic. Others, like the maintenance of a public school system are non-socialistic. If not conducted by some state agency, they would not be attended to at all.

J. W. Burgess, whose book on *Political Science and Comparative Constitutional Law* (2d ed., 1902) placed him twenty years ago among our foremost publicists, is even more sweeping in his conclusions. The ultimate end of the state, he says, is "the perfection of humanity, the civilization of the world; the perfect development of the human reason and its attainment to universal command over individualism; the apotheosis of man."

This change of attitude toward state functions necessitates an overhauling of notions relative to the origin and sanction of the state and of government. Burgess, in his acceptance of the so-called "historical theory" on this point is fairly typical of the modern attitude. It includes, he says, everything of value in all the other theories. It admits "that the Creator of man implanted the substance of the state in the nature of man," and that, in this sense, the state may be regarded as founded by God. It recognizes the place of the social compact, too, but that place "is far forward in the evolution of the

state." The state first made objective in institutions and laws is the product of history. Substantially these same views are expressed in Woodrow Wilson's excellent work, *The State* (1889). In fact, since Woolsey's *Political Science* appeared in 1877, American publicists have usually accepted the substance, at least, of the historical theory.

With the jettison of the social compact, (*see*) much of the the old doctrine of natural rights has gone by the board. These so-called "rights" are not now regarded as absolute nor as rights at all, except in a moral and rational sense. In most of our general works these questions are discussed at length. In addition, we have a number of historical treatises dealing particularly with them, such as G. L. Scherger's *Evolution of Modern Liberty* (1904).

Our publicists have fairly outstripped their European fellows in one important field of political theory. Lieber, Burgess, Wilson, Willoughby and others, all clearly distinguish government from society or the state. The government is the organization or instrument wherewith the state or society, the persons organized, effectuate their will. This distinction bears strongly on our conception of sovereignty, the ultimate power in the state. Forms of government no longer confuse us. A society may be democratic and yet express its will through an oligarchic or a monarchic government. Moreover, the distinction has its practical side. When "more democracy" is recommended we ask whether it means the direct participation of more individuals in public executive, legislative and judicial functions or the organization of the state on a wider basis, as by the adoption of woman suffrage, or merely an increased responsibility of existing government officials to society as at present organized. Whether a "progressive" measure is really democratic depends upon the answer to this question. The initiative and referendum, the direct primary and the recall, are calculated to alleviate quite different ills.

Textbooks.—Of general American textbooks on political science there is a goodly number. The comprehensive treatises of Woolsey and Burgess have already been noticed. Even wider in its scope is *An Introduction to Political Science* (1910) by J. W. Garner. Garner's studies have hitherto been largely in the department of history but this book fairly earns him a place in the political science fold. It is a noteworthy one because of the wealth of authority amassed. Where the field covered is so broad, there can be no pretense to exhaustive treatment. Opinions differ as to the value of such general, introductory works. They are at least a chart for hurrying navigators of light draft, and, as such have their use. R. G. Gettell has published a well arranged and useful small volume *Introduction to Political Science* (1910). *The Principles of Politics* (1909), by J. W. Jenks, deals more particularly with American problems and is, therefore, hardly to be classed among general textbooks.

Local Government.—We have next to consider those of our modern publicists who have interested themselves especially in local questions. F. J. Goodnow is best known as a student of general administrative law and has published on this subject two considerable works; *Politics and Administration* (1900), and *Comparative Administrative Law* (1903). Even these volumes, however, seem to have been written with American problems constantly in mind and this attitude has now been emphasized in *Social Reform and the Constitution* (1911). Goodnow attacks boldly our time honored doctrine of separation of powers. He declares the traditional tripartite division unworkable. The logical and actual division of powers he holds to be bipartite. The essential functions of the state are, first political, and second administrative. The political functions, exercised mainly through constitutional conventions, legislatures, political parties and the judiciary, are the expression of the will of the state. They embrace constitution making, legislation, the selection and control of government officials. The administrative functions, on the other hand, are the execution of the will of the state, that is, the administration of justice and administration, commonly so-called, by the judiciary and the executive officers.

Like most students of administrative law, Goodnow favors strong central control over local officials. In this view he is ably supported by J. A. Fairlie, who instituted a series of publications on local municipal and national administration with his *Centralization of Administration in New York State* (1898). Fairlie regards centralization in administration as but a phase of the modern tendency toward division of labor and production on a large scale.

Municipal Government.—Any consideration of the relations between central and local administration suggests the skeleton in our political closet, municipal government. That we do not shudder at the rattle of the bones as we once did is due in no small part to the number of able and disinterested men who have thought and written upon our municipal difficulties. Only a fragmentary list is needed to indicate how much of the time and effort of our publicists has been devoted to this problem. To choose at random, we have F. J. Goodnow's *City Government in the United States* (1904), and *Municipal Government* (1909); Fairlie's *Municipal Administration* (1901), and *Essays in Municipal Administration* (1908); *The Government of European Cities* (1909), *The Government of American Cities* (1912), and various lesser studies of our own peculiar in-

stitutions, such as *The Galveston Plan of City Government* (1907) by W. B. Munro; *Municipal Government in Great Britain* (1894) and *Municipal Government in Continental Europe* (1895) by Albert Shaw; *The American City* (1903), *The Government of Great American Cities* (1908), and *Municipal Franchises* (1910) by D. F. Wilcox; *American Municipal Progress* (1902) and *A Decade of Civic Development* (1905) by Charles Zueblin.

Socialism.—Any discussion of city government leads naturally to the study of socialism, or, as some prefer to call it, communism. It is characteristic of our publicists to think of socialism in terms of actual, paternal legislation. Such legislation, of course, need not be, and is not, restricted to cities, but in the consideration of municipal affairs there is ample opportunity for prosocialist partisans. Such an one is F. C. Howe whose *The City, the Hope of Democracy* (1905), and *The British City—The Beginnings of Democracy* (1907) have been widely read. Of the advocates of communism, who stray beyond the municipal field, Morris Hillquit of New York, with his *History of Socialism in the United States* (1903) and *Socialism in Theory and Practice* (1909), deserves mention. For more impartial and quite as helpful discussion of a subject which is enlisting much of the best thought of our time, the student may consult, among others, the works of R. F. Ely, J. R. Commons, H. C. Adams and Simon N. Patten.

Miscellaneous Works.—Like every other advanced community, we have developed out of our own political conditions a body of literature somewhat difficult to classify, but worthy of notice and much of it worthy of careful study. Of this nature are Woodrow Wilson's *Congressional Government* (1885), A. L. Lowell's *Essays on Government* (1889), Arthur T. Hadley's *Standards of Public Morality* (1907), and David S. Jordan's *Imperial Democracy* (1899). The list might well include the works of President Eliot, the late John Fiske, E. L. Godkin, Gamaliel Bradford, F. H. Giddings, Jesse Macy, P. S. Reinsch, J. A. Woodburn, A. C. Coolidge, J. Q. Dealey, H. J. Ford, Bernard Moses, James Schouler, F. A. Cleveland, Herbert Croly and many others. Americans have always been frank to discuss their own excellences and their own shortcomings. The habit sometimes makes them disagreeable and occasionally ridiculous. But it helps powerfully to foster that interest in affairs without which political dry rot is certain.

Sociology and Economy.—Economists and sociologists also are concerning themselves more and more with questions of political theory. The interest of the economist in the functions of government is obvious, an interest bound to increase with the greater governmental control of commerce and industry. As the state is but one, although the most important, form of social organization, the sociologists are even more involved in politics. Thus, F. H. Giddings in his *Principles of Sociology* (1896) even undertakes to define such a political term as natural rights. These he holds to be "socially necessary norms of right enforced by natural selection in the sphere of social relations." J. R. Commons, too, has developed a sociological view of sovereignty, based on an historical study of social institutions. L. F. Ward in his *Dynamic Sociology* (1883), goes at length into the social functions of government as does also E. A. Ross in his work on *Social Control* (1901).

Jurisprudence and Law.—Of even greater importance as political theorists are our students of jurisprudence and constitutional law. They exemplify strikingly in their effort to relate theories of the state and of government to the law of the land, the practical bent of American publicists. Historic and general treatises we have, such as John C. Gray's *Nature and Sources of the Law* (1909), H. P. Judson's *Essentials of a Written Constitution* (1903). We have, too, authors who combine the historic and systematic treatment, like D. K. Watson in his *Constitution of the United States* (1910). But our most characteristic product in this field is the systematic study of our own existing constitutional law. Such are: *The Police Power* (1904) by Ernst Freund; Emlin McClain's *Constitutional Law of the United States* (1905); *The Law of the Constitutions, State and Federal* (1907) and *Federal and State Constitutions* (1909) by F. J. Stimson. In addition W. W. Willoughby has published (1910) an excellent two volume work, *The Constitutional Law of the United States*, valuable both to the practicing lawyer and to the student of American politics.

No name could more fittingly close this sketch than that of the late Thomas McIntyre Cooley (*see*). He was an eminent business man, teacher, compiler of statutes, lawyer, editor and judge. Yet he found time to publish a series of original contributions to the study of our government and laws, for which he will be long, perhaps longest, remembered. His *Treatise on Constitutional Limitations* (1868), and *Principles of Constitutional Law* (1880), are known to all students of our government. Thus far we have produced no Hobbes or Rousseau but men like Cooley almost make the deficiency good. He illustrates well the strongest quality of American publicists, an insistence that theories be practical and practicable.

See LAW, CONSTITUTIONAL.

References: Titles given in the articles above. Special reference should be given to C. E. Merriam, *Hist. of Am. Pol. Theories* (1903); W. A. Dunning, "Am. Pol. Philosophy" in his *Essays on Civil War and Reconstruction* (1898), 353–365; A. C. McLaughlin "Social Compact and Constitutional Construction" in *Am. Hist. Review*, V (1899), 467–490.

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POLITICAL THEORIES OF ENGLISH PUBLICISTS

England's Contributions.—England, especially the England of modern times, has been a prolific breeder of political theorists. Among her publicists, too, are many of the very first rank. Hobbes, Locke, Bentham and Maine belong to the race of intellectual giants. The two Mills, Austin and Spencer, with many a lesser but not unimportant name, complete a roll of which Englishmen may well be proud. The work of these thinkers marks the progress of political theory from the doctrine of the social compact (*see* SOCIAL COMPACT THEORY) to modern communism. Of this long political journey there is scarcely a step which is not lighted by the work of some strong English mind.

Early Publicists.—Prior to the Puritan Revolution Englishmen seem to have taken little interest in theoretical politics. Three writers of some note did, indeed, engage in the endless continental dispute over the boundary between ecclesiastical and temporal power. These three were John of Salisbury (?—1180), William of Ockham (?—1349?) and John Wycliffe (?—1384). The first named favored, on the whole, papal supremacy; the others opposed it. Ockham and Wycliffe profoundly agitated the church, but none of the three reasoned on political topics in a fashion which engages the modern mind. John of Salisbury, for instance, defended tyrannicide, but only tyrannicide of a decent and religious character. Poisoning, being without Scriptural precedent, he abhorred. Of the political philosophers, other than the foregoing, who antedated the Puritan Revolution there is likewise little that need be said. Sir John Fortescue (1394?—1476?) was rather a jurist than a publicist. He did, however, expound a state of nature preceding the establishment of government. In this state of nature, natural law (*see* LAW OF NATURE), a universal code of all created things, dictated by God and embodying perfect justice, prevailed. Fortescue thought the English government a peculiarly fortunate combination of "royal" and "political" rule, that is, a personal monarchy, tempered by popular laws. Sir Thomas More (1608–1674), a cheerful pessimist who died, jesting, on the scaffold, published his *Utopia* outside England. It is a satire on the political life of his time, embracing an attack on private property and a defence of communism amazingly out of place in the reign of fat King Hal.

James I; Filmer.—The Puritan Revolution tilled the soil which produced the first English political theory worthy of careful attention. The royal philosopher, James I (1566–1625), in his *True Law of Free Monarchy* had maintained the theory of the Divine Right of Kings. For a king he did it well, too, basing his arguments on Scripture, the law of nature and the law of Scotland. His constructive case was somewhat weak, it is true, but when he held that anarchy is worse than even a divinely justified monarch he spoke loud and to the point. Sir Robert Filmer (?–1653) in his *Patriarcha,* added to James' case the argument that kings have inherited from the early heads of families patriarchal authority, the only kind of authority ever directly consecrated by God (*see* DIVINE RIGHT OF KINGS).

Richard Hooker.—The first noteworthy opponent of unlimited royal power was Richard Hooker (1554?–1600). Writing in defense of the Anglican Church against the Puritans, but regarding all governments as identical in fundamental principles, he applied his reasoning to secular government as well as to the church. He was, also, among English writers the first prominent exponent of the social contract theory, later associated with the names of Hobbes and Locke. He regarded political life as instituted by a formal contract, to the terms of which, in the laws of the land, both ruler and ruled are subject.

John Milton; James Harrington.—The political theories of John Milton (1608–1674) and of James Harrington (1611–1677) were in a sense complementary. Milton devoted himself to the freedom of the individual; Harrington, to the organization of the state. Milton, holding that all political power rests fundamentally in the people, desired a wide sphere of individual activity, unrestricted by any government. Authority is for the capable, but liberty for all. He prayed for religious toleration, freedom of the press and freedom from sumptuary laws. Harrington in his *Commonwealth of Oceana* (1656) opposed the monarchic organization of the state. He advocated an aristocracy, or even a plutocracy. Stability is the desired end, and, to secure it, the supreme authority must rest with the owners of property. The ownership of property, however, must not be concentrated in the hands of a few. It must be wide-spread, and the doors of public office must be open to all who possess it. Harrington influenced considerably the minds of early American statesmen, notably John Adams and Daniel Webster.

Algernon Sydney.—Algernon Sydney or Sidney (1622–1683) was another opponent of royal power. In his *Discourses Concerning Government* he took a position strongly suggestive of the later utilitarians. Government, he said, rests on no prescription, either of God or nature, except as such prescription is to be found in the dictates of reason.

Hobbes and Locke, Compared.—The foremost publicists of the Revolution were Thomas Hobbes (1588–1679) and John Locke (1632–1704). These two, with Rousseau, so dignified the theory of the social contract that it dominated the minds of thinking men for well nigh two hundred years. Both regarded the social contract as an agreement made by the members of society in order to escape the evils of a pre-governmental state of nature. But here the resemblance between the two ended. They were men of utterly different types of mind and they reasoned to diametrically opposite conclusions. Hobbes is an exact thinker. His close knit arguments fit together like a mathematical demonstration. He is a hardened materialist who sees in the selfish gratification of desires the mainspring of human action. Locke reasons loosely and in generalities. He sees visions. Hobbes' conclusions are a justification of absolute monarchy; Locke believes in the divine right of revolution.

Thomas Hobbes.—Hobbes' *De Cive* appeared in 1647, his principal work, *Leviathan*, in 1651. Starting with an analysis of the human mind and its activities he passes on to the objects of human endeavor and is thus led to consider the "Natural Condition of Mankind as concerning their Felicity and Misery." This condition, he held, is a war of all against all. Since man is utterly selfish, his sole aim is to satisfy his wants. As the aim of every other man is the same as his, a clash is inevitable. In the state of nature there existed no distinction between right and wrong, none between justice and injustice. Nothing is unjust except what is unlawful and in the state of nature there is no law. What is termed the law of nature is merely a scheme which is likely to aid those who pursue it in getting what they want. It is, "Do not that to another which thou wouldst not have done to thyself." To avoid this ceaseless war of all against all, mankind agreed for themselves and their successors, every man with every other, to give up absolutely the right of governing themselves to a representative, chosen by the majority, thus forming a common power to restrain and protect individuals. This agreement constituted the social contract. Hobbes' purpose in writing was to uphold the Stuart king, whom he assumed to be this chosen representative, and he framed his premises with that end in view. The choice of a dynasty to possess supreme power, once made by the majority, he held to be irrevocable. Furthermore, as the King was not a party to the contract he could not violate it. The contract was among those persons who chose him, not between him and them. Hence there is no sound basis for the doctrine that resistance to a King is justified where the King has not kept faith with his people. A King has no faith to keep. He is the wielder of a supreme power placed in his hands without condition. The command of the sovereign might, indeed, be resisted when it involved the subjects' death, because the contract contemplated no such command; but, whatever may be thought of the logic of this exception, resistance to a monarch unrestrained morally as well as physically is hardly to be deemed a valuable privilege. Hobbes was from the modern standpoint, something of a reactionary but, nevertheless, he made a great and lasting contribution to political theory. In his analysis of law he surpassed all his predecessors. He was the first to point out unmistakeably that a law, properly so-called, is the command of the sovereign. Furthermore, he had a clear conception of sovereignty as a power unrestrained except by self-imposed, moral restraints. As to who is the sovereign, that is, the possessor of this power, publicists have wrangled to the present day. To Hobbes's mind the sovereign was, in England, the Stuart king. The great philosopher failed to emphasize sufficiently the moral limitations to which every sovereign should bow and he certainly mistook the identity of the sovereign in England. But one or two cardinal points he made so clear that they who run may read. He taught Englishmen the distinction between politics and morality.

John Locke.—If Hobbes maintained that politics are not morality, Locke's thesis was that politics should be tempered by morality and above all by reason. His *Two Treatises of Government* (1690) was a justification of the Revolution. Locke, like Hobbes, believed in a state of nature which antedated the existence of government. But in Locke's mind the state of nature did not antedate the existence of a real society. Peace and reason prevailed in that state, likewise a law embodying the rules of equity and interpreted by reason. Every individual then possessed the natural rights of life, liberty and property. But after a time the need for some common organ to interpret and execute the law of nature made itself felt. To secure this common organ the social contract was made. Every individual gave up to the community as a whole his individual right of executing the law of nature and punishing offenses against it. This execution of the law of nature and enforcement of natural rights is the justification and province and the sole justification and province of political authority. As to just what are offenses against natural law, violations of the right of life, liberty and property, Locke is not specific. A man's "right" to any one of these things varies infinitely with circumstances. What it is at any particular time and place constitutes the daily problem of political life. Locke was no nearer a specific solution of this problem than we are today. But he indicated for all time the general limits within which this solution must be worked for. The individual is

not the slave of the community. A majority may be a worse tyrant than ever was a Sennacherib or a Catherine II. There is a standard of individual freedom, none the less real because seen but darkly. There are restraints upon the majority, none the less binding because they are rational and moral, not physical restraints.

Viscount Bolingbroke.—From the Puritan to the French Revolution English political theory was well nigh a barren plant. Henry St. John, Viscount Bolingbroke (1678–1751), defended the constitution of 1688 as a perfect example of the desirable blending of the monarchic, aristocratic and popular elements in government.

David Hume.—David Hume (1711–1776) did this and more. He may be called the first of the utilitarians, for he denied the whole doctrine of a contract basis of government and maintained that men submit to authority because of the advantage to the individual of a peaceful and orderly social life.

Edmund Burke.—The great English publicist of French Revolutionary time was Edmund Burke (1729–1787). His *Reflections on the Revolution in France* and *Appeal from the New to the Old Whigs*, doubtless stayed for years the progress of liberal reform in England. Burke worshipped at the shrine of the English constitution as developed under divine guidance during and after the year of grace, 1688. He felt that no political institutions could be practically successful unless rooted in the past. The French, to his mind, were breaking with all their traditions, instead of developing along the lines of their previous history. Property and liberty he felt to be endangered. Furthermore he feared, with some small show of reason, that the French madness would communicate itself to England. Therefore he urged his great antirevolutionary appeals with an extravagance of statement which amuses the reader of today, but which the majority of his fellow citizens accepted in all seriousness. By Americans however, Burke should be remembered for his attitude on the American Revolution rather than the French. His views with regard to the colonies show another side of his character. Although he believed in aristocratic government he was at heart an individualist and he was also a substantially just man. His great speech on *Conciliation with America*, delivered in the House of Commons, March 22, 1775, is a classic. It illustrates, better than any other work of Burke's life, his instinct for applying general principles to concrete cases. It is a plea for political toleration, for generosity and for peace. The speaker realized that England had to deal with men who were not fanatics, who respected life and property, who looked to English history for a definition of their rights and a justification of their claims. Whether or not the colonists read history aright, their attitude of reliance on the past appealed to Burke, just as the French break with the past alienated him. He was, in a sense, the forerunner of the historical school of Maine. Add to this fact a suggestion of utilitarianism, due to a mind essentially practical, the result is Edmund Burke.

Jeremy Bentham.—The next noteworthy English publicist was Jeremy Bentham (1748–1832). His political theories are scattered throughout his voluminous writings, but may well be studied in his *Fragment on Government* (1776) and *Principles of Morals and Legislation* (1789). He was the great utilitarian. In his view, the true aim of law and government is the happiness of the governed. This happiness consists mainly in four things: subsistence, abundance, equality, and security. In the ideal state, that is to say, every man would enjoy creature comforts not merely sufficient to sustain life but sufficient to gratify his every reasonable desire; he would have as much as his neighbor and he would be secure in his possessions. In practice it is impossible to insure to every man all these sources of happiness, but the effort to insure them is the justification of government. Security is the most important of all, and, to maintain it, equality, abundance and even, in some cases, subsistence must go by the board. The problem of maintaining security where a considerable part of the community lacks subsistence, Bentham never solved. His place in history is due to the fact that he applied to specific political problems of his day shrewd conclusions drawn from his thinking on general topics. The era of reform in England, reform in religious tests, in the franchise, in local government, in poor law administration, is the era of Benthamite legislation.

James Mill; John Stuart Mill.—Bentham's doctrines were elaborated and applied by his disciple James Mill (1773–1836), and also in a modified form by the latter's son John Stuart Mill (1806–1873). James Mill was an unmitigated utilitarian. His son, although he pleaded for individual freedom, nevertheless had in him something of the modern communistic school, strangely mingled with the Benthamite principles. Bentham was a philanthropist and a humanitarian: the younger Mill was all that and something more. Perhaps we may explain it by saying that he was a greater believer in human interdependence and also in human progress. His life was a long and pathetic effort to discover the laws of human progress. His mature views are probably best set forth in his *Considerations on Representative Government* (1861). The best government he holds to be that which best promotes the general mental advancement "in intellect, in virtue and in practical activity and efficiency." In developed states the government most likely to promote this advancement is, in his opinion, a representative democracy.

John Austin.—One other disciple of Bentham must be mentioned in passing, the great jurist, John Austin (1790–1859). His work, properly speaking, was in the field of jurisprudence, but he incidentally made to political theory contributions of great value. He gave precision to such terms as law and sovereignty, showed the relation of custom to law and explained the nature and disadvantages of judicial legislation. His principal work, *The Province of Jurisprudence Determined*, was published in 1832.

Historical School: Maine.—The latest school of English political theorists whose work may be regarded as in any sense complete, is the so-called historical school. Its leader was Sir Henry James Sumner Maine. His work on *Ancient Law* (1861) marked the rise of a new group of thinkers who maintained that the proper method of political study is historical. It is idle, they said, to theorize about the origins of government; idle to attempt the justification of government or of any particular form of government by reasoning on general principles. Constitutions are not made, they grow. Study history and find out why and how they have grown. Cease guessing at an answer which is written in ancient records. Learn to read. Furthermore, the new school not only stood for a change in methods of study. It was led by the historical method to conclusions widely different from those of its predecessors. Natural law and natural rights, so far as they exist at all, are a rational and ethical conception. They are an ideal. No thinker who restricted his quest for political truth to the habits of ancient Britons could be expected to hold ideals. Benthamite utilitarianism, too, was a theory. It was never practiced in any ancient community. Maine and his followers doubted the efficacy of any principle or ideal to combat the results of man's historical development. Humanity, they held, has but a sadly limited capacity to frame and to adjust itself to new conditions. For the most part, man is but the creature of circumstance.

The historical school undoubtedly emphasized a truth before too little regarded. Political institutions are framed, accepted and supported, not only because of a belief that they accord with divine or moral principles, not only because of a belief that they make for the happiness of the governed, but as well because of the events of thousands of years of history, many of them hidden in an impenetrable past. But man can profoundly alter existing institutions either for better or for worse. He can and should interfere to change the sequence of political events. If he is to do so, he must act on principle. To frame these principles he must not only contemplate the history of the past, but as well must he look to an ideal future. All progress demands not only fact but theory as well.

Herbert Spencer.—One other English publicist must be named in this brief sketch. Herbert Spencer (1820–1903) attempted to synthesize all scientific knowledge along the lines of the biological discoveries of Darwin and his followers. In the field of politics he himself admitted that the analogies to biological law are far from perfect. So we may dismiss this feature of his political speculation with the greater equanimity. On the more practical questions of the day he was an extreme individualist. In his *The Man versus the State* (1884), he laments the modern tendency of the state to interfere more and more with the affairs of the community, even though the object of such interference be the protection of health and morals. Such opinions are now out of date. Indeed, Spencer may almost be regarded as the last English political theorist of the extreme individualistic type.

The Present Controversy; Socialism.—Today the controversy rages along a new line of struggle drawn closer to paternal government. Whether we welcome the fact or no, there is now but one question of the first importance to publicists throughout the western world. That question is socialism (*see*). Except as they bear on it, international war threats and republican uprisings are but anaemic issues. England is no exception to the general state of affairs. In fact it would hardly be too much to say that in England the only political question is socialism in some form or other. All thinking men are asking: How far is the individual subject to the restraint and entitled to the assistance of the community? In England too, this question is no longer one of mere theory. Old age pensions (*see*) are a fact and unemployment (*see*) insurance is a probability. The end is not yet and no man can say where the end lies. The forces of socialism are organized and determined. They are also noisy. The chiefs of the Labor Party, the faithful of the Fabian Society (*see* FABIAN SOCIALISTS) and a score of literary knights errant swell the cry. Nor are their opponents silent. Out of all the confusion we may hope to see emerge some new principle, applicable not only to theoretical questions but to practical politics as well.

After all it is in putting theory into practice that the peculiar genius of Englishmen lies. So true is this, that their political theory is often overshadowed by their practical accomplishments. We think of them as politicians not as publicists. But a man is no less a publicist because he himself puts his own theories on the statute book. It would not be fair to close this review without reference to the men—often nameless today—whose work lives after them in the body of English law. The statutes of Merton and Westminster, the Petition and Declaration of Rights, all these and other enactments as well, embody a part of English political theory, al-

though they must be studied as constitutional history and law.

Conclusions.—In conclusion, it may be said with regard to the purely theoretical English political writers of importance that they fall roughly into three main schools. These three are the social contract, the utilitarian and the historical. A fourth school, the socialist or communist is being evolved at the present time. Of the three whose work may now be estimated, no one commanded uniformity of opinion in its adherents. Among the utilitarians, and, especially, the exponents of the social contract, there was great divergence of views. Every school committed errors, but, nevertheless every one of them made a solid contribution to political thought. The social contract school taught that the foundation of government is the acquiescence of the governed. That this acquiescence may be due to force or habit and may be informal or implied as well as express, does not materially lessen the value of the teaching. Furthermore, Locke made all men his debtors by upholding a rational ideal of individual freedom which the law is bound morally to respect. The utilitarians maintained rightly that governmental measures should be framed with an eye single to their actual effect. The historians, seeing that both ideals and efficiency must wrestle with man's long inheritance, urged that every advance be rested on the strength of progress already achieved. Today, as insistently as when first delivered, these messages all demand a hearing. Time has not depreciated the efforts of English publicists. They will be strong men whose names may worthily be added to such a roll.

See GOVERNMENT, THEORY OF; INDIVIDUALISM; LAW OF NATURE; ORGANIC THEORY OF THE STATE; POLITICAL PHILOSOPHY; POLITICAL SCIENCE; POLITICAL THEORIES, ANCIENT AND MEDIAEVAL; POLITICAL THEORIES OF AMERICAN PUBLICISTS, EARLY; POLITICAL THEORIES OF AMERICAN PUBLICISTS, RECENT; POLITICAL THEORIES OF MODERN CONTINENTAL PUBLICISTS; SOCIAL COMPACT, THEORY; SOCIOLOGY.

References: Works and authorities cited under respective lives in *Dictionary of National Biography* (1908, 1909); W. A. Dunning, *A History of Political Theories from Luther to Montesquieu* (1905), chs. vii, viii, x; W. Graham, *English Political Philosophy from Hobbes to Maine* (1899); L. Stephen, *Hist. of English Thought in the XIX Century* (1876), II, ch. x. HENRY A. YEOMANS.

POLITICAL THEORIES OF MODERN CONTINENTAL PUBLICISTS

The Reformation Period.—The Protestant Reformation fostered general independence of thought and thus profoundly affected political as well as religious theory. Its political results, however, were not in any considerable degree immediate and the only notable publicist among the sixteenth century reformers was John Calvin (1509–1564). Martin Luther (1483–1546) rendered obscure his own distinction between secular and ecclesiastical authority and lessened his own fame as a political thinker by his advocacy of passive obedience to civil power. Ulrich Zwingli (1484–1531) as a political theorist is negligible. Philip Melancthon (1497–1560) conceived a natural law based on instinctive notions of right and wrong and developed at some length the forms and functions of government. But Calvin was the Protestant lawgiver. In his *Institutes of the Christian Religion* (1536) he recognized the necessity of secular government and its organization separate from the church. To it he entrusted with much explanatory detail the protection of life, liberty and property and the care of piety and religion. For it, as represented by the city-state of Geneva, he demanded, in fact, passive obedience. In theory such obedience was limited by "the law of God." This last qualification is significant. In later years it was made to justify a doughty resistance to constituted authority in France and the Low Countries. It indicates, moreover, the real importance of the Protestant reformers in the history of political theory. In their minds "the relation of church to state and the moral basis of the latter constituted the whole of political theory." Wherever civil potentates could be identified with God's elect, they became a bold and bigoted aristocracy: wherever they remained in outer darkness, their Calvinist subjects might be expected to revolt.

To support fully the Protestant struggles in France and Holland a more militant theory than that of the early leaders was required. Such was the theory of Francis Hotman (1524–1590). He published, in 1573, *Franco-Gallia*, an historical attempt to demonstrate that France was not and never had been an absolute monarchy. The *Vindiciae contra Tyrannos* (1579), probably the work of Hubert Languet or Duplessis-Mornay, was more comprehensive as well as more complex. On grounds of Old Testament history and Roman legal theory the author maintained that God, the monarch and the people are parties to a contract. The king and his subjects agree with each other respectively to rule justly and to obey: both agree with God to sustain the church of His elect. When the King rules unjustly or attacks the

church, the people, acting through their magistrates, may resist him as the violator of a contract. The German, Johannes Althusius (1557–1638), in his *Systematic Politics* (1610), and the Spaniard, Juan de Mariana (1536–1623), in his *On Kingship and the Education of a King* (1599), supplemented the efforts of these Huguenot writers with arguments based on popular sovereignty. What they meant by "popular" they never made clear. But they, as well as the Huguenots, made a distinct advance when they rested political authority on human rather than divine support.

Jean Bodin.—The foremost publicist of these times, however, was the upholder of absolute monarchy, Jean Bodin (1530–1596). A student of the philosophy of history, he possessed the mind and enjoyed the training of a jurist. His *Six Books Concerning the State* (1576) opens with the following definition: "A State is an aggregation of families and their common possessions, ruled by a sovereign power and reason." Dunning's comment on the passage may serve as an epitome of Bodin's views: "In this is implied, what the later chapters elaborate, that the basis of the State, both in historical and in logical development, is the family; that a distinction must be drawn between interests that are common and those that are not; that a supreme power is essential to the idea of a State; and that government is conditioned by a moral end." Bodin saw plainly that liberty is not license and that in the social state freedom of action is hampered as well as enlarged. The existence of the social state, originating in the social instinct and developed by means of force, was the basis of his speculation. Sovereignty he held to be "Supreme power over citizens and subjects, unrestrained by the laws." There are, however, divine laws of nature and of nations and also vague rules of superior obligation faintly resembling a constitution in the modern American sense, to which even sovereigns must bow. The failure to elucidate these laws and rules constitutes the chief defect of Bodin's work. His attachment to the court of Henry III may have dimmed, at this point, the usual French clarity of his mind. Far more exact than his theory of sovereignty is his distinction between forms of State and forms of government. The possession of sovereign power determines the former, the manner of its exercise the latter. In both method and substance it is fair to say that Bodin took a long step forward. He reintroduced the Aristotelian spirit into political science.

Francisco Suarez.—In Spain as well as in France and Germany political theory flourished in the sixteenth century. Her publicists, stimulated to consider fundamental questions of politics and government by the contact of Spanish arms with the new world, expanded the law of nations until it assumed something like its modern form. Of these publicists Francisco Suarez (1548–1617) is the best known. He regarded natural law as the basis of ethics, something inherent in the human soul, whereby right is distinguished from wrong. In theory it is implanted by an omniscient being, but in practice Suarez so makes it conform to the dictates of right reason that the superhuman element is often hidden. The law of nations is what is politically expedient and is evidenced by common usage. Suarez also propounded a theory of popular sovereignty suggesting that of Rousseau. But popular sovereignty in practice is alienated, preferably, thinks Suarez, to an absolute monarch like the Spanish King.

Grotius.—In Hugo de Groot, or Grotius (1583–1645), the Netherlands produced a modern publicist of very high rank. His *Law of War and Peace* (1625) closely resembles the *De Legibus* of Suarez but occupies a far larger place in modern thought. His moderation, reasonableness, erudition and high official position explain largely a reputation which, though deserved, is not based on originality of ideas. Grotius almost abandoned the revelation theory of the law of nature (*see*). It is "the dictate of right reason, indicating that any act, from its agreement or disagreement with the rational nature, has in it moral turpitude or moral necessity." In framing this rational standard of right and wrong the interests of all men are to be considered. Grotius followed the theories of Suarez regarding the law of nations but so developed and applied them that "under the influence of his example the meaning of *jus gentium* soon became narrowed from 'the law common to all or many nations' to 'the law governing the intercourse between nations.'" Grotius also considered the origins and sanctions of the state, but confused the "natural impulse" theory of Aristotle and the theory of contract based on self-interest. He may have intended to distinguish *society* based on natural instinct from the *state* founded on contract. The most important work of Grotius was his development of international law. But his rational concept of natural law coupled with his ill-defined theory of compact was destined to react powerfully against absolute monarchy, which strangely enough, he probably thought to support.

From Grotius to Montesquieu.—Between Grotius and Montesquieu continental Europe produced theorists of note but none of an importance equal to theirs. Samuel Pufendorf (1632–1694), in his *Law of Nature and of Nations* (1672), summarized and elaborated and attempted with some measure of success to reconcile the theories of Grotius and Hobbes. Johann Christian Wolff (1679–1754) further elaborated the doctrines of Grotius and Pufendorf and was, in his turn, followed and enlarged upon by Emer de Vattel, whose *Law of*

Nations appeared in Leyden in 1758. Leibniz (1646–1716) and Thomasius (1655–1728) had, before this, respectively assailed and defended the work of Pufendorf. The philosopher Benedict de Spinoza (1632–1677), a Portugese Jew living in Holland, advocated religious freedom and an aristocratic republic. In Italy was developed in the wake of Vico (1668–1744) a sort of humanistic school comprising, among others, Beccaria (1735–1793) and Filangieri (1752–1788). The Abbé Galiani (1728–1787), on the other hand, was a cynical disciple of utilitarianism and force. In France the eloquent prelate, Bossuet (1627–1704), in his *Politics Derived from the Holy Scriptures* (1709), upheld the absolute monarchy of Louis XIV in a series of arguments based on quotations from the Bible, but marked by traces of the theories of Hobbes.

Montesquieu.—None of these seventeenth century publicists, however, stand out in the history of political theory as does Charles de Secondat, Baron de Montesquieu (1689–1755), author of *The Spirit of Laws* (1748). Only a part of this famous work treats of what may be termed political theory: it is largely a discussion of social, economic and religious matters. In dealing with political questions Montesquieu applied himself not so much to the rational bases of states as to the principles which must be observed if political society is to maintain itself and its activities after it is once organized. Assuming the existence of governments, he divides them into republican, monarchic and despotic. Of republican governments he distinguishes the democratic and the aristocratic—all this is well trodden ground. But his analysis of the character and the education of citizens proper to these several kinds of government is far more illuminating. So, too, of the value of particular institutions in the maintenance of a loosely defined "political liberty." He developed a theory of separation of powers which went far beyond Locke and introduced into political philosophy the division of governmental functions into legislative, executive and judicial, which has now become traditional. Furthermore, Montesquieu's definition of laws as the necessary relations springing out of the nature of things has a depth and significance not yet completely grasped by students of political theory. It indicates how small a part the work of the politician really plays in the world's affairs and how necessary it is for him, if he is to be successful, to conform his efforts to physical and psychological principles over which he exerts slight if any control. In method Montesquieu's arguments were bolstered by such wide reference, more or less accurate, to history that he seems at times a follower of Vico and a member of the modern historical school.

Rousseau and Voltaire.—No contrast could be sharper than that between Montesquieu and Jean Jacques Rousseau (1712–1778). The former stands for conciliation, moderation, liberty in what we have come to term the constitutional sense; the latter, for arbitrary radicalism. Montesquieu, as has been said, smacks of the historic school. Rousseau is the extreme disciple of the *a priori* system of natural law. It is difficult to speak of Rousseau in measured terms. He is hypothetical, fanciful, contradictory. He contrasts an imaginary natural man of primitive times with the man of modern society, and concludes that the only escape from the existing evils he pictures in the contrast is a system of unrestrained control by the majority. His drawing both of the natural and of the social man suggests truth but is as artificial as his conclusion is insupportable to all but extreme socialists. Indeed, the *Discourse upon Inequality among Men* (1754) and the *Social Contract* (1762) are the first chapters in the written book of socialism. There is no consistent adherence by the author to any principle; but so far as he had a thesis, it is that every man in modern society surrenders himself and all that he possesses to the control of the community, in practice the majority of the community. He had grasped the truth that within the proper sphere of government the well considered, formally expressed will of the majority must and should prevail. He failed utterly to appreciate the real difficulty of the problem; namely how far the majority should keep its hands off the individual altogether. When his abstractions were welded into the deeds of the French Revolution their inefficacy revealed itself. And yet no student of political theory can afford to neglect Rousseau. There is scarcely a chapter of the *Social Contract* which does not stimulate thought and challenge discussion on topics vital to modern politics.

With Rousseau it is usual to link Voltaire (1694–1778). It must be admitted, however, that the latter contributed nothing either original or important to political theory. He exposed the fallacies and weaknesses of other writers. He attacked religious intolerance, serfdom and other specific abuses. He illumined all that he approached, but he added little or nothing to the existing body of political doctrine.

French Economists.—Of the French "Economists" Mercier de la Rivière (1720–1793) is fairly typical. They upheld the right of property as the foundation of society and maintained the true function of government to be not *making* laws but *recognizing* laws which already exist in the social order. This doctrine, of course, suggests Montesquieu. The "Economists" were strongly attached to the absolute monarchy. Opposed to them were the "Communists" of whom the Abbé Mably (1709–1785) was foremost. They drew their inspiration from Plato and were the first mod-

ern publicists seriously to deny altogether the doctrine of private property. In the period just preceding the Revolution, France exhibited two publicists of individual note. Baron Turgot (1727–1781) and the Marquis Condorcet (1743–1794) made the first clear statement of the principle which animates our modern efforts toward social and political amelioration, the principle of progress. "The mass of humanity in alternating periods of quiet and disturbance presses forward, though slowly, toward perfection." In revolutionary times the Abbé Sièyes (1748–1836) was notable both as a man and as a publicist, but his peculiar field was actual legislation rather than political theory. The same may be said of Count Mirabeau (1749–1791).

German Publicists of the Eighteenth and Nineteenth Centuries.—Of the German publicists of the eighteenth century the first to be noticed is Immanuel Kant (1724–1804). His political doctrine in the narrow sense of the term forms an important, though but a small part of his voluminous philosophy. Kant avoided the error of Hobbes and Spinoza who confounded right with force, and of Plato who confounded right with morality. The liberties of every man are limited by the liberties of every other man who comes in contact with him. They are not absolute, but relative. Right means the reconciliation of these liberties. These theorists marked a long forward step. They did not, however, solve the problem still unsolved today. A general standard of right Kant could frame; the application of that standard to the affairs of daily life he hardly attempted. Johann Gottlieb Fichte (1762–1814), a disciple of Kant, was the foremost German commentator on the French Revolution. To us, the main interest in his work arises from the sharp contrast between him and Edmund Burke. To Burke history and experience were everything; to Fichte, nothing. Fichte distinguished between the legitimacy and the wisdom of a revolution. But he devoted himself almost exclusively to the question of legitimacy and thought in terms so general as to make his suggestions almost valueless. He confused the right of revolution with the right to change the fundamental law. The two may be the same thing, but they may also be very different things. How far men should go without the law to alter the constitution of the state is the real question at issue and this question Fichte did not solve.

Of the German philosophers of the nineteenth century Schelling (1775–1854) really contributed little to political thought. Hegel (1770–1831), in his *Natural Law and Political Science* (1821), developed Rousseau's principle of the state as the general will. He recognized in history the oriental, the classical and the Germanic periods, in which freedom appertained respectively to the despot, the governing class and the body of citizens. Wilhelm von Humboldt (1767–1835) opposed to the vague communistic notions of Friedrich Krause (1781–1832) a stiff individualism. Friedrich Karl von Savigny (1779–1861), whose two works, *History of Roman Law in the Middle Ages* (1815–1831) *and System of Contemporary Roman Law* (1840–1849), are well known, deserves to be remembered for his demonstration that the study of positive law cannot be divorced from the study of the science of all law without injury to both.

Ferdinand Lasalle (1825–1864), though spoken of as a publicist, was really an organizer of working men, in which capacity he laid the foundation of the present day Socialist Party in Germany. Heinrich Carl Marx (1818–1883), whose book entitled *Capital* (1867) has made him famous, was, in fact, a publicist. However much his theories that commodities should exchange on the basis of the labor required to produce them and that the community should demand from every one labor according to his capacity and provide for everyone according to his needs, have been discredited, it remains true that he saw clearly and indicated forcibly the truth too often overlooked that historical evolution is largely conditioned by systems of production. Johann Kasper Bluntschli (1808–1881), Heinrich Rudolf Herman Friedrich von Gneist (1816–1895), and Albert Eberhardt Friedrich von Schäffle (1831–1903), are almost contemporaries. Bluntschli, by his *History of Modern Political Science* (1864), and *Theory of the Modern State* (1875–76), did much to reconcile the historical and philosophical methods and also to render specific and exact political terms which had long been loosely employed. Gneist was an adherent of monarchy, but a strong champion of liberal views, a prolific writer on constitutional law and history and a reformer of judicial procedure and penal law. Schäffle, in his *Structure and Life of the Social Body* (1875–1878), developed a theory of society somewhat akin to the organic theory of Spencer. His criticisms of socialism are extremely valuable.

Recent French Publicists.—Of the French publicists of the nineteenth century the one of peculiar interest to American readers is Alexis Charles Henri Clerel de Tocqueville (1805–1859). De Tocqueville accepted democracy as an accomplished fact to be observed, not as a proposition to be argued. His famous book, *Democracy in America* (1835), was an attempt to make this observation and to record his conclusions. Much of it would repay careful study in this time of unrest. The development of physical well-being in our country, the diffusion of knowledge, sympathy for human misery, the encouragement of all kinds of activity, these he recognized fully. But along with them he noted the instability of the laws, the defective character of office-holders, the discouragement of excellence, the tyranny of numbers.

No more enlightened statement of the virtues and defects of modern democracy has ever been penned.

See DIVINE RIGHT OF KINGS; GOVERNMENT, THEORY OF; NATURAL RIGHTS; SOCIAL COMPACT THEORY; SOCIALISM; SOVEREIGNTY; STATE, THEORY OF.

References: W. A. Dunning, *A Hist. of Political Theories from Luther to Montesquieu* (1905); Adolphe Franck, *Réformateurs et Publicistes de l'Europe, dix-septième siècle* (1881), *dix-huitième siècle* (1893); J. K. Bluntschli, *Geschichte der Neueren Staatswissenschaft, Allgemeines Staatsrecht und Politik, Seit dem 16, Jahrhundert bis zur Gegenwart* (1881); Gustav Schmoller, *Zur Litteraturgeschichte der Staats-und Sozialwissenschaften* (1888); Paul Janet, *Historie de la science politique dans ses relations avec la morale* (3d ed., 1887); G. L. Scherger, *Evolution of Modern Liberty* (1904).

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POLK, JAMES KNOX. James K. Polk (1795–1849), eleventh President of the United States, was born in Mecklenburg county, N. C., November 2, 1795. In 1806 the family removed to Tennessee, where he studied law with Felix Grundy, and in 1820 was admitted to the bar. In 1823 he was elected to the legislature as a Democrat, and in 1825 entered Congress, where he remained a member of the House until 1839. In Congress he supported Jackson, served as chairman of the ways and means committee, and from 1835 to 1839 was Speaker. From 1839 to 1841 he was governor of Tennessee. In the election of 1840 one of the electoral votes of Virginia was cast for him for Vice-President. In the Democratic convention of 1844 he was a "dark horse" candidate, and was nominated unanimously on the ninth ballot. In the election he received 170 electoral votes against 105 for Clay, the Whig candidate. His published diary shows that, in the war with Mexico and the Oregon controversy with Great Britain, he both dominated his Cabinet and controlled Congress, and followed throughout his administration a definite and even dogmatic policy. He was not a candidate for reëlection in 1848. He died at Nashville, June 15, 1849. See WARS OF THE UNITED STATES. References: J. S. Jenkins, *Life of James K. Polk* (1850); James K. Polk, *Diary* (ed. by M. M. Quaife, 1910); M. F. Follett, *Speaker of the House* (1896); G. P. Garrison, *Westward Extension* (1906).

W. MACD.

POLL TAX. The poll or capitation tax is a per capita tax generally levied uniformly upon males. It may, however, be graded according to occupation or other qualifications. It is sometimes levied as a specific amount against all persons subject to the tax; and sometimes takes the form of a quasi-property tax based upon an arbitraty valuation of polls. During the colonial period, when there was more general equality in individual wealth, the poll tax constituted an important source of revenue. Although under present conditions it bears unequally upon taxpayers, it has been retained and may be found in the tax systems of nearly all states, although in some its collection is not strictly enforced. It is usually levied on adult males—two dollars being a common rate. The tax is notoriously evaded. In 1902 less than a million dollars, more than half in Massachusetts, was thus collected in all the American cities which had populations of 30,000 or over; Pennsylvania ranks next in the use of this tax; and has two kinds—uniform and graded, according to the occupation. As a rule the poll tax is levied only upon adults over twenty-one, and exceptions are generally made in favor of those of advanced age. In a few cases the exemption applies to all above forty-five. See TAXATION, SUBJECTS OF; TAXES, DIRECT. References: C. J. Bullock, *Selected Readings in Public Finance* (1906), 193–210; U. S. Census Bureau, *Wealth, Debt and Taxation* (1907), 651; C. F. Bastable, *Public Finance* (2d ed., 1895), 433–436.

D. R. D.

POLLOCK vs. FARMERS' LOAN AND TRUST COMPANY. A suit was brought in the proper federal court by Pollock and others as stockholders of the defendant company to restrain that company from paying to the United States a tax on its income according to the provisions of the income tax law of 1894, it being alleged that the income of the company was derived from real estate, the bonds and stocks of corporations, and municipal bonds (157 *U. S.* 429 and 158 *U. S.* 601). The contention for the complainants was that the tax which they sought to have restrained was a direct tax not levied according to any apportionment among the several states as required by the provision of the Constitution relating to representation and direct taxation (Art. I, Sec. ii, ¶ 3). On appeal to the Supreme Court of the United States it was first held by a divided court that a federal tax on the rents or income from real estate is a direct tax and therefore invalid if levied in accordance with valuation and not by apportionment among the states. On a rehearing in the same case it was held further that taxes on the incomes from personal property are likewise direct taxes, four of the justices dissenting. This decision overruled earlier decisions of the same court holding that the only direct taxes contemplated by the constitutional provision are capitation taxes and taxes on land. Since the rendition of the judgments in the latest income tax cases above cited there is still ground for discussion as to the power of the Federal Government to tax incomes and it has been decided that corporation taxes and

inheritance taxes are not within the prohibition as to direct taxation. See TAXATION, PRINCIPLES OF; TAXES, DIRECT. References: C. E. Boyd, *Cases on Am. Constitutional Law* (1898), 91; J. R. Tucker, *Constitution of the U. S.* (1899), I, 460–465. E. McC.

POLLS. In the United States, the term "polls" means the place where electors vote. Where the Australian ballot has been adopted, the law requires that the polling places be provided with ballot-booths, each of such dimensions as to accommodate one voter, and so constructed as to screen him from observation while he is preparing his ballot. The booths are shut off by guard-rails, and no unauthorized person is allowed to be present within these barriers. Ordinarily, the voter's name is marked upon an official check-list as he enters the ballot-booth enclosure and again as he deposits his ballot. The election officers must be drawn from different parties. In some states each party is allowed challengers during the vote, and watchers during the count. Growing stringency marks laws intended to protect the voter from undue influence while at the polls. Oregon even requires that no "political badge, button, or other insignia shall be worn at or about the polls on any election day." Severe restrictions condition the assistance which may be given to voters. Under the New Jersey law, 1911, no official ballot may be taken outside of the polling-place; if a person declares under oath that because of ignorance of the English language, or because of some physical disability, he is unable to mark his ballot without assistance, the board of registry and election may assign one of its members to assist him. All members of the board (but no one else) have the right to witness the preparation of such a voter's ballot, but they are forbidden to reveal the name of any person for whom the assisted elector voted. See BALLOT; BALLOT, AUSTRALIAN; ELECTION SYSTEM IN THE UNITED STATES; SUFFRAGE. References: G. W. McCleary, *Am. Law of Elections* (4th ed., 1897), 515–522; Article "Elections" in *Cyclopedia of Law and Procedure*, XV (1905), 362–374.

GEORGE H. HAYNES.

POLYGAMY. Polygamy is prohibited by law in the United States and the Supreme Court of the United States has decided that should one enter into it in accordance with the teachings of a system of religion, that fact cannot be plead as a defense; and that the constitutional guarantee of religious liberty will not protect such a person from prosecution for bigamy. In mediæval law a bigamist was one who married again after his first wife's death, while in the modern sense it corresponds to either polygamy or polyandry, or polygany, which includes both and covers all plural marriages whether that of a man with more than one legal wife, or of a woman with more than one legal husband. Bigamy was first punishable by statute in England in 1604, and is now everywhere illegal where monogamous marriage is recognized by the law of the state. By act of Congress, March 9, 1896, rights of inheritance, however, were secured to the issue of bigamous and polygamous marriages, and by another act, a few days later, the children of such unions "heretofore contracted between members of the Church of Jesus Christ of Latter-Day Saints, born on or prior to the fourth of January, 1896, were legitimated." See MARRIAGE AND DIVORCE. Reference: G. E. Howard, *History of Matrimonial Institutions* (1904), II. S. McC. L.

POOLING IN RAILROADS. A pool may be defined as an agreement among railroads for the division of competitive traffic or earnings. Its purpose was to prevent cut-throat competition and the consequent serious depletion of earnings. Beginning about 1870, pools were formed in practically every section of the United States where railroads were in competition. As there was no effective way in which adherence to the agreements could be enforced, but few of them had any permanence. They grew out of rate wars and their dissolution in turn created rate wars. With the passage, in 1887, of the Interstate Commerce Act these agreements, which were never legal in the sense of being enforceable at law, were made illegal in interstate commerce as they had been previously in many separate states. During recent years the recommendation has frequently been made in presidential messages and in the reports of the Interstate Commerce Commission that pooling be legalized under governmental authority and measures in conformity therewith have been introduced into Congress. Doubtless the extensive consolidation of railroads has diminished the importance of the pooling agreement, yet its reëstablishment would promote stability in rates and remove some of the opportunities for discrimination. However, the popular fear of monopoly has up to the present time (1913) prevented any action. See INTERSTATE COMMERCE LEGISLATION; TRAFFIC AGREEMENTS. References: A. T. Hadley, *Railroad Transportation* (1886), 74–76, 91–96; T. M. Cooley, in McCain, *Compendium of Transportation Theories* (1893), 229–250; Henry Hudson, in *Quart. Jour. of Econ.*, V (1891), 70–94. F. H. D.

POOR LAW GUARDIANS IN ENGLAND. By the Poor Law of 1834 (4–5 William IV, c. 76) the administration of public poor relief in England was transferred to boards of guardians elected in new districts known as poor law unions. There are about 650 such unions in England and Wales, made up of groups of parishes. They are very unequal in area and population, often ignore the ordinary munic-

ipal boundaries, and are frequently altered. Each union has an unpaid board of guardians, the members of which (since 1894) are elected triennially by the voters of parishes within the union, each parish having, as a rule, at least one representative. Women are eligible as voters and as members of the board. When the board of guardians has been elected it may add to its membership one or two persons from the list of voters. The board also elects its own chairman either from among its own members or from outside.

The chief function of the board of guardians is the maintenance and care of the union's workhouse or poorhouse. It appoints the officers of the workhouse, makes various regulations for its proper conduct and disburses the funds derived from the annual levy of the poor-rate. The assessment for this levy is, however, made not by the guardians but by officials known as overseers who are appointed by the parish meeting in each parish of the union (*see* PARISH COUNCIL). Boards of guardians may also raise money by loan for any permanent object, such as the erection of a new workhouse or pauper school; but for this they must have the consent of a national authority, the local government board (*see* LOCAL GOVERNMENT IN ENGLAND). In fact this central authority exercises the strictest sort of supervision over all the official doings of the guardians. It lays down general rules for their guidance, audits their accounts, passes upon any regulations they may make, and acts as arbitrator in any difficulties which they may encounter.

In addition to providing a workhouse the guardians may afford "outdoor relief" to persons incapacitated by age or otherwise. This outdoor relief takes the form of weekly allowances, but legislation relating to old age pensions has considerably reduced the strain upon the finances of the boards.

See LOCAL GOVERNMENT IN ENGLAND; PARISH.

References: P. F. Aschrott, *The English Poor-Law System* (1903); J. Redlich and F. W. Hirst, *Local Government in England* (1903), II, 203–223; and P. W. L. Ashley, *Local Government* (1905), ch. v.

W. B. MUNRO.

POOR LAWS. There has never been any comprehensive study of the poor laws of the United States. Each state has its own poor laws, and no effort has been made to secure uniform legislation.

The poor laws of Massachusetts and New York have been studied by Dr. John Cummings; the Connecticut poor laws by Dr. Edward Warren Capen.

The poor laws of Pennsylvania were compiled by Calvin T. Beitel in 1899; the poor laws of Michigan were compiled by Justice S. Stearns in 1900. But these compilations were not accompanied by any comprehensive studies of the poor law system of those states.

For the most part the poor laws of the United States have followed either Massachusetts, where the town system of poor relief prevails, or New York, where county care of the poor predominates. In some states both the county and town systems obtain.

In Massachusetts, elaborate "settlement laws" exist which complicate the question of poor relief according to residence, voting and payment of taxes, and have resulted in the distinction between state and town paupers. Similar laws, less complicated, exist in other New England states, but in most of the states a settlement is established by a year's residence within the state and "state paupers" are not recognized.

Massachusetts and New York have elaborate laws and agencies for the deportation of non-resident and alien paupers. Similar work, on a smaller scale, is done by the state authorities of Minnesota and Wisconsin.

In nearly all of the states of the Union, almshouses are county institutions, though Massachusetts has a state almshouse, Vermont has town almshouses, and town almshouses and city almshouses exist in a number of the large cities of the United States. In some communities, as in St. Paul, Minnesota, almshouses and public hospitals are maintained by the city and county jointly.

In many states, state boards of charities or state boards of control exercise supervision over public agencies for the care of the poor and pass upon plans for almshouses.

In most states a portion of the insane, and in all states, a large portion of the feeble-minded, are classed as paupers and kept in almshouses where the care is generally inadequate. In New York, Minnesota and California, all indigent insane patients are a state charge and are kept in state institutions. In Wisconsin and in part of Pennsylvania county asylums for insane are maintained under laws which ensure a high standard of administration and care.

Systems of "out-door relief" are found in most of the states. Except in the larger cities, this duty is usually imposed upon county commissioners, township overseers, village trustees or other officers who have other important duties. As a result, outdoor relief is usually inefficiently administered and in many communities it is used as an instrument of party politics.

In a considerable number of states it is forbidden by law to keep children of sound mind and body, except infants, in poor houses.

See CHARITIES, PUBLIC AGENCIES FOR; CHILDREN, DEPENDENT, CARE OF; OUTDOOR RELIEF; POVERTY AND POOR RELIEF.

References: Indiana State Board of Charities, *Reports*, 1904, 14–16; 1905, 67; 1908, 75; E. J. Devine, *Principles of Relief* (1910);

Ohio State Board of Charities, *Report*, 1901, 231; A. G. Warner, *American Charities* (1908); J. Cummings, *Poor Laws of Massachusetts and New York* (1895); C. T. Beitel, *Poor Laws of Pennsylvania* (1899); E. W. Capen, *Historical Development of the Poor Law of Connecticut* (1905); S. Stearns, *Compilation of Laws Relating to the Support of Poor Persons in Michigan* (1900); State Conferences of Charities, *Proceedings* (obtainable from state secretaries).

H. H. HART.

POOR MAN'S DOLLAR. A term applied to the silver dollar because of the belief that silver coinage was more favorable to the earning and laboring class than the gold standard. See SILVER COINAGE CONTROVERSY.

A. B. H.

POPULAR GOVERNMENT

Lincoln's Statement.—The most striking sentence penned by Abraham Lincoln was "Government of the people, for the people, by the people." No political idea has had more influence in the last century and a half than that of the inherent right of self-government. It is, however, a conception hedged in by limitations which are often ignored, and which make it in practice different from the conventional statements of its meaning.

Limited Number of People.—At the outset arises the question who are the people who are to enjoy popular government. At the time when the Declaration of Independence declared that "It is the right of the people . . . to institute new government," and the preamble of the Federal Constitution asserted that "We the people of the United States . . . do ordain and establish this Constitution," those who framed and subscribed those documents had in mind only a small proportion of the actual individuals then within the limits of the United States.

(1) About one-sixth of the whole population, namely, the negro slaves, were legally not members of the body politic (*see* NEGRO PROBLEM) though many free negroes were citizens. (2) Aliens were not considered to be a part of the people, though by international comity or by treaty they had the right to go to and fro, to engage in their callings, to sue and be sued; and if they remained in the country they usually had the opportunity of becoming citizens. (3) Even citizens were not necessarily part of "the people" in the sense of the time. Half the population was female, and in the conditions of that time entirely ineligible for the suffrage; and the legal rights and status of women were so inferior that they were not even the same kind of citizens as non-voting men. (4) Children were no part of the legal people, though by birth or by the naturalization of their parents most of them were citizens. (5) Indians resident within the United States, unless they abandoned their tribal status, were not citizens, and still less a part of the people (*see* INDIANS, CONSTITUTIONAL AND LEGAL STATUS OF). Some of them were subject to slavery. (6) Several classes of dependent citizens were also outside of a share in popular government even when normally voters, such as convicts, indentured servants and apprentices, prisoners for debt, the insane, the imbecile and the paupers. (7) Among the full grown free white men above 21, only a limited number had the suffrage; in some colonies not above a third. Of the 4,000,000 people in the United States in 1790 probably not more than 250,000 were "people" in the constitutional sense. (8) In colonial and later times, at the highest, 85 to 90 per cent of the qualified voters have taken part in elections. Many elections are so close that a fraction over fifty per cent of the votes cast determines the result; under the usual plurality system, less than a third of the votes cast may bring in a winning candidate.

Most of these conditions of Revolutionary times still persist sufficiently to make it certain that popular government is really minority (*see*) government. In six of the southern states the number of actual negro voters in proportion to the negro population is not much greater than it was in 1790 (*see* SUFFRAGE, NEGRO). Tribal Indians are still excluded, as are children, the defective, the dependent, and convicts. Hundreds of thousands of unnaturalized aliens have no vote. Only in nine states (1914) in the Union have women now the complete suffrage (*see* SUFFRAGE; WOMAN SUFFRAGE). Government of the people, even in the favorable conditions of the United States, is no more than government of the whole population by the considerable part of the adult men who choose to take part in elections (*see* BALLOT; SUFFRAGE).

Types of Popular Government.—Can popular government still be a government substantially, representing the popular will, and responding to the people's own conception of their needs? It does persist in four distinct types.

(1) The simplest form of popular government is the mass meeting of all persons entitled to participate. Many primitive governments had such popular meetings which appear in such forms as the *boule* of the Greek cities, the *comitiae* of the Roman republic, the Saxon witenagemot. There are several survivals of this nearest approach to a real government by the people. Chinese, Indian and

Russian village communities practise it. The *Landesgemeinde* of Appenzell is made up on the stated day of 14,000 men, every one girt with a sword, who proceed to transact the business of their canton *viva voce*. Some similar gatherings appeared in all the English colonies which later became a part of the United States. In the South they were simply electoral assemblies, in New England they were little local governments, which within the field assigned them by the colonial legislature made their decisions by majority vote. In the rural parts of New England such town meetings are still going on, every voter having a right to take part in discussion and vote (*see* TOWN MEETING).

(2) The usual form for carrying on popular government is a representative assembly, which is the great political invention of modern times. In the middle ages and later, membership in diets and estates was personal; in the case of cities, counties or provinces which could not be physically present, delegates were sent who, however, were really diplomatic agents and never truly representatives, since they acted solely under instruction from their home governments. In various European countries, however, particularly in England, there grew up a system in which cities and other territorial units sent representatives to a states general or parliament in which, having once been chosen, the delegates voted according to their free will, and their vote aided to constitute a law which was binding upon their constituents. This system of representation was transplanted to the North American colonies and there flourished, as nowhere else in the world, partly because of a very democratic constituency, partly because of mental alertness and interest in the public business. That system, continued in the new state governments, has flourished to the present day.

(3) The simplest form of representative popular government is a legislature chosen from time to time by those who have the suffrage, and creating for itself such executive and judicial authorities as it may think necessary. Such was the government of some of the German and Italian free cities, and of the earliest governments of New England. In the proprietary and royal colonies, the executive authority was largely determined by the proprietor or the Crown.

(4) For a short time at the beginning of the Revolution the congresses and conventions of the revolting colonies were pure representative governments—barring the fact that the Tory voters, even if in a majority, were by force and threats prevented from voting for representatives. Every one of those governments was altered within a few years so as to include separate executive and judicial departments, some of which for the time being sprang from the legislature, some of which were chosen in other ways, or appointed by the elective executive. This type of complex popular representative government persists in the 48 states of the Union, and has had great influence as a political system throughout the world.

Representation in Proportion to Numbers.—The original basis of representation in all forms of popular government was territorial; members of parliament stood for boroughs or counties, members of the colonial assemblies were chosen by towns or counties, usually an equal number from each town or county. Thus five thousand people in a populous county had no more influence in the assembly than a thousand people in a sparsely settled county. Ever since the Revolution a struggle has been going on to break up this system of territorial representation, and substitute one of electoral districts, nearly equal to each other in population. County representation still has some influence in the South; and in New Hampshire, Connecticut and Rhode Island, there is still town representation. On the other hand, in some states containing a large city, especially New York, there is a provision that the city shall not have more than a fixed proportion of the members of at least one house of the state legislature.

This principle of equal electoral districts, each voter casting his ballot in the place of his domicile, though much disturbed by the gerrymander (*see*), is an assertion of the fundamental right of every voter to an equality of influence in choosing representatives. It is not a universal principle; in Prussia the voters are divided into classes so that the small number of heavy taxpayers choose as many representatives as numerous small taxpayers; in England a man may vote in the same election in every district in which he has the necessary qualifications; and in Belgium, also, some persons have had more than one vote up to 1913.

Federal Popular Government.—To apply popular government to a small country with simple conditions is difficult, particularly if, as in most European countries, it has to adjust itself to a hereditary king, and house of nobles. The difficulty enlarges when the effort is made to keep up a popular and responsive government in a great country like France, with many millions of population, and a variety of commercial, economic and religious interests. More difficult still is the application of popular government to a federal country, in which there are numerous commonwealths, each the focus of a separate popular government. The problem here is to maintain two centers of governmental authority, each of which shall truly represent the people. All federal governments have a non-popular element in the indirect and in some cases hereditary upper house of the legislature; and no federation has ever attempted to choose its executive and judiciary officers by direct popular vote.

Hence, popular influence is more difficult to exert in such governments. On the other hand the magnitude and interest of the affairs of the nation attract the voters, as is shown in the United States by the heavy vote in presidential as compared with state and municipal elections. The experience of the six federal governments now flourishing shows that the popular will can be expressed and enforced through the national government just as promptly and effectively as through the commonwealth governments.

Government by the Minority.—If popular government is everywhere minority government, in practice it is carried on by a minority of this minority; so that even in very democratic states the actual decisions are usually made by not more than a tenth of the population, who in their turn are frequently controlled by a tenth of their own number. The difficulty in applying the popular will is that positive reform through the alteration of existing laws can be carried out only through the existing machinery of government, and that small numbers of people organized and acting together are potent against unorganized larger numbers acting as individuals or in small groups.

Nevertheless the rule of the majority is practically the only one possible in real popular government because if five men want one thing and four men want another the presumption is that if they break up their government the five will still be stronger than four. In all legislative matters, however, the majority means the majority of people chosen —or in most cases simply the majority of those present—in the two houses of the legislature; through irregular or artificial electoral districts that majority may be chosen by a minority of the voters; within the legal majority, organized as a party, the caucus (*see*) is commonly considered binding on the dissentients; the caucus majority may be under the influence of a small number of party leaders, who again in some great states in the Union not infrequently accept the decisions of a single boss. What becomes of popular government under this system?

Indirect Popular Control.—Popular government survives because under the most elaborate political machinery there is more popular control than appears on the surface. The boss holds the leaders together because they think he can give them good things; those good things he provides through his influence on administrators and legislators (*see* INFLUENCE IN GOVERNMENT); that influence depends upon the belief that the majority of his party will stand by him, which ultimately goes back to his ability through his friends to control the elections. Here comes in a very effective popular check. Leaving out of account direct frauds and the refusal to record the results of the popular election, the party system is subject throughout to the danger of abstention. Americans are very slow to transfer themselves from one party to another, but will often stay away from the polls and let the candidates of the opposite party come in, or will vote for a third candidate, knowing that their regular party nominees will thereby be defeated.

This simple process of voting according to reason and personal interest is greatly aided by the appearance from time to time of strong, vigorous and independent men from outside the party machines, who through other ways than politics get the public confidence, and who smash party slates and "queer" elections by scoring unexpected majorities. Once elected, prosecuting attorneys, mayors, governors, presidents and legislative leaders have unusual opportunities to secure and hold public confidence as against the regulation party leaders. The beaten boss is always cruising outside the port, and will put in again if he can; but experience shows that the right kind of a man combined with the right kind of issue can in many states head and direct a real popular government.

One reason for the tendency to elect such men is the growing popular confidence in executive heads as centers of legislative influence. Mayors, governors and presidents frequently, through the conviction that they have the voters behind them, compel members of the legislature to pass bills for which they have very little stomach (*see* INFLUENCE IN GOVERNMENT; PRESIDENT, AUTHORITY AND INFLUENCE OF).

Popular Control of Party Machinery.—Representatives the world over probably average as high in character and public spirit as the majority of their constituents, but do not necessarily average higher, and are much more subject than the electorate to personal influences good and bad. In the United States the control of the nominating machinery by the machine makes it impossible in ordinary elections to be elected at all without the imprimatur of the party leader, and that is the reason why the monied interests are able by their relations with party leaders to see that some members, and often a majority of members, in a legislative body are friendly to them. The direct primary (*see*) is a device for keeping government popular by enabling people to get on the party ticket without the leader's endorsement; and though not free from manipulation it considerably increases the chance of the majority in a district getting a representative to their mind. The initiative (*see*) and referendum (*see*) are similar devices to act when the majority in the legislature gets out of touch with the majority of electors. While very different in principle and working from the legislation of a town meeting or other mass of voters, the initiative and referendum restore to the majority a power which has

often been usurped. The usual objection to the initiative and referendum is that crude, ill digested, and conflicting measures may thus be adopted; to which the obvious answer is that genuine popular government includes the legal right to legislate crudely and ill advisedly.

Constitutional Limitations on Popular Government.—How far do the limitations of modern constitutions in general interfere with popular governments? So far as they require elections at stated periods for named officials with a fixed term of tenure, the popular will is restrained from making changes during the time limit of such regulations; though in the latter days a system of recall (*see*) has been instituted in some states, whereby the terms may be cut short. The recall, however, is only an extension of the system of short terms and rotation in office which was long obtained in the United States. The people bind themselves also by their constitutions to acknowledge authority exercised by various officials and parts of the government upon the relations of human life. Thus the governor vetoes and pardons; the courts hear and decide causes and pass on the validity and meaning of legislation; the legislatures lay taxes, but not on certain kinds of property nor above a certain proportion to the assessed valuation. The people are bound by these gifts and withdrawals of power, so long as the constitution lasts; and inasmuch as the Federal Constitution is very difficult of amendment, popular government seems to be specially restricted by its provisions.

In the states the people have what has become the swift and easy remedy of changing a constitution; and the present tendency is to decrease the powers of the legislature while increasing to the people the opportunities of reviewing the action of the government through the agency of the initiative, the referendum and the recall.

Success of Popular Government.—In the long run popular government tends to recover its own balance. The things that are done in a decade in any state are in general the things desired by the majority of the voters who put their minds on public affairs. One proof of this success is the large number of voters, especially among the richest and most highly educated part of the community, who do not vote or much exert themselves in government, the reason being that on the whole they think their interests sufficiently conserved by the government of the people who do vote. In the long run, what agency, individuals or combination of individuals within the United States could furnish a better government than the people themselves? The essence of free government, like the theory of salvation, is free will; but free will is not shut in to the right to choose righteously, it includes the right to choose evil if one so prefers. There is no theory of government or constitutional principle which will allow the people or their agents to exercise enlightened discretion for the public welfare, but will forbid them to work public ill. Popular government is nothing occult, it is in the last resort only the recognition of the principle that the body of people in a state acting through a majority of those physically and morally qualified, and having therefore an actual predominance of will, knows better what it wants and is more likely to secure it than any small body of persons who may be selected for them by any process known to man.

See Ballot; Bureaucracy; Centralization; Checks and Balances; Communism; Democracy, History of; Government, Theory of; Initiative; Legislation, Direct; Liberty, Legal Significance of; Local Self-Government; Machine, Political; Majorities, Theories of; Minorities, Rights of; Minority Representation; People, Definition of; Public Opinion and Popular Control; Recall; Referendum; Representative Government; Responsible Government; Social Compact Theory; Societies, Legal Status of; Sovereignty of the People; State, Theory of; Suffrage; Voting, Preferential.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, chs. lxxvi–lxxxvii; W. E. H. Lecky, *Democracy and Liberty* (1896); Sir H. S. Maine, *Popular Government* (1886); M. Ostrogorski, *Democracy and the Organization of Pol. Parties* (1902); Alexis de Tocqueville, *Democracy in America* (Reeve's trans., 1835; Bowen's trans., 1863); C. W. Eliot, *Am. Contributions to Civilization* (1897); J. S. Mill, *Essay on Liberty* (3d ed., 1864); Edmond Kelly, *Government or Human Evolution* (1900); Elisha Mulford, *The Nation* (1871); C. E. Merriam, *Hist. of Am. Pol. Theories* (1903); A. B. Hart, *National Ideals Historically Traced* (1907); Hugo Münsterberg, *The Americans* (1904).

Albert Bushnell Hart.

POPULAR SOVEREIGNTY. During the period from 1789 to 1861, two distinct policies prevailed with respect to the government of the territories belonging to the United States. Until the Mexican War, Congress acted upon the theory that it possessed full constitutional power to govern them. The status of all the territory of the United States with respect to slavery had been fixed prior to the Mexican War. In anticipation of the acquisition of territory by that war, the issue was raised whether slavery should exist therein. This issue Lewis Cass (*see*) sought to solve by evolving the theory afterward designated as the doctrine of popular sovereignty. He argued that the Constitution nowhere clearly grants Congress general legislative authority over the territories. Its control should there-

fore be limited to the necessary minimum of organizing territorial governments, leaving to the inhabitants the regulation of their domestic affairs.

This doctrine constituted Cass's chief political asset in the election of 1848. It was again advocated in the compromise debates of 1850, but failed of acceptance, since Congress avoided all reference to slavery in the Utah and New Mexico territorial acts. Notwithstanding this, in 1854 Douglas made the assertion that in 1850 Congress had consciously substituted the principle of popular sovereignty for the old policy of congressional control of the territories, the pretext for repealing the Missouri Compromise (*see* COMPROMISE OF 1820) restriction. By the Nebraska bill, Congress formally committed itself to the new territorial policy. The bill, however, contained two vital defects. It ignored the deep interest of the nation in the result of the contest over Kansas; and it was equivocal in not stating clearly when the privilege of local determination should become operative. Bleeding Kansas was the logical result. The career of the doctrine of popular sovereignty was terminated by the decision in the Dred Scott case (*see*) which upheld the right of slavery to enter all the territories.

See CASS, LEWIS; COMPROMISE OF 1820; COMPROMISE OF 1850; DRED SCOTT CASE; KANSAS-NEBRASKA BILL; KANSAS STRUGGLE; SLAVERY CONTROVERSY.

References: J. F. Rhodes, *Hist. of U. S. from the Compromise of 1850* (1893), I, II; A. C. McLaughlin, *Lewis Cass* (1891); G. P. Garrison, Westward Extension (1906); T. C. Smith, *Parties and Slavery* (1906); J. B. McMaster, *Hist. of the People of the U. S.*, VII (1910), VIII (1913); A. Johnson, *Stephen A. Douglas* (1908). MILO M. QUAIFE.

POPULAR VOTE FOR PRESIDENT. See VOTE, POPULAR.

POPULAR VOTES ON LEGISLATIVE QUESTIONS. See VOTES, POPULAR, ON LEGISLATIVE QUESTIONS.

POPULATION OF THE UNITED STATES

Rapid Growth.—The increase of the population of the United States is a phenomenon such as has never before been recorded in any country. As recorded by the decennial censuses, this population has doubled three times since 1790, when the first census was taken; in 1820, again in 1850, and again in 1880, each period being 30 years. At the present rate of growth, the population will double for the fourth time at the census of 1920. The actual rate of growth has been much more rapid than this, however, as is shown by estimating the population for each year, on the assumption that the yearly increase is equal to one-tenth of the increase in ten years shown by the decennial census. On that basis the population of the United States has already doubled four times, will probably double for the fifth time about 1934, and for the sixth time about 1987, as may be indicated by the following table:

TABLE I.—DOUBLING OF POPULATION

Year	Population	Year	Population
1790	3,929,214×2= 7,858,428	1813	7,959,452
1813	7,959,452×2= 15,918,904	1838	16,228,765
1838	16,228,765×2= 32,457,530	1862	32,866,331
1862	32,866,331×2= 65,732,662	1892	67,347,000
1892	67,347,000×2=134,694,000	1934	135,577,286
1934	135,577,286×2=271,154,572	1987	272,862,003

The periods within which the population has doubled, by this method of calculation, and is likely to continue to double, are as follows: 1st, 23 years; 2d, 25 years; 3d, 24 years; 4th, 30 years; 5th, 42 years; 6th, 53 years.

It is true that the rate of increase is decreasing—a fact which makes calculations as to future increase purely speculative; but that the population of continental United States will approximate 300,000,000 by the end of the twentieth century seems probable. So that the pressure of population upon the means of subsistence is destined in time to create a problem similar to that which already exists in England, India, and some other countries. This question of overpopulation has not as yet become important. The population per square mile of the continental area of the United States in 1910 was 30.09. The most densely populated state was Rhode Island, with 508 per square mile, while in the entire mountain division, no state exceeded a population of 7.7 per square mile. The density of population in the United States, as above stated, may be compared with that of England, 559 per square mile, Belgium, 563.7, British India, 223.8, and China, 225.6.

Before 1790.—There was no complete enumeration of the population of what is now the United States prior to the first federal census of 1790. A number of enumerations were made of different colonies at the instance of the British board of trade, all of them fragmentary and imperfect. A full account of them and their results appears in *A Century of Population Growth* by William S. Rossiter, published by the Census Office in 1909. Estimates of the population of the colonies have been made by Prof. F. B. Dexter, George Bancroft, the historian, and J. B. D. De Bow,

superintendent of the seventh census (1850) with results widely different. Professor Dexter's estimate puts the population of the colonies at 25,000 in 1640; 500,000 in 1721; 1,000,000 in 1750; 1,610,000 in 1760; and 2,205,000 in 1770.

Population by Thirteenth Census.—The actual population as returned at the thirteen federal censuses is shown in the following table, in which is also given the area as stated at each decade, and the percentage of increase in the preceding ten years:

TABLE II.—INCREASE OF POPULATION BY DECADES

Census	Land Area, sq. miles	Population	Increase	Percentage of Increase	Number of Persons per sq. mile
1790	819,466	3,929,214	--------	----	4.8
1800	819,466	5,308,483	1,379,269	35.1	6.5
1810	1,698,107	7,239,881	1,931,398	36.4	4.3
1820	1,752,347	9,638,453	2,398,572	33.1	5.5
1830	1,752,347	12,866,020	3,227,567	33.5	7.3
1840	1,752,347	17,069,453	4,203,433	32.7	9.7
1850	2,939,021	23,191,876	6,122,423	35.9	7.9
1860	2,970,038	31,443,321	8,251,445	35.6	10.6
1870	2,970,038	38,558,371	7,115,050	22.6	13.0
1880	2,970,038	50,155,738	11,597,412	30.1	16.9
1890	2,970,038	62,947,714	12,466,467	24.9	21.1
1900	2,970,230	75,994,575	12,946,436	20.7	25.4
1910	2,970,230	91,972,266	15,977,691	21.0	30.1

This table includes only the population of what is known as continental United States, exclusive of all outlying possessions, such as Alaska, Hawaii, etc. In 1910, the total population under the Federal Government was about 101,100,000, including 64,356 in Alaska; 191,909 in Hawaii; 1,118,012 in Porto Rico; 55,608 in military and naval service abroad; 7,635,426 in the Philippine Islands (as returned by the census taken by the War Department in 1903); and estimates of the population of the islands of Guam and Samoa, and of the Panama Canal Zone.

Diminishing Rate.—The rate of increase in population by decades must be measured by the increase in land area occurring at intervals, the most important of which were the Louisiana purchase, the annexation of Texas, the Mexican cession, and the extinction of the British claims to the Oregon territory. With allowance for these increases in area, the rate of population increase has been less irregular than appears. The actual rate of increase has probably diminished steadily except in the decade ending in 1870, which was affected by the Civil War, and in which year the census of the southern states was declared by Francis A. Walker, who superintended it, to have been very defective.

Comparative Population and Rate of Growth.—Nevertheless it remains a greater rate of increase than that of any other country of like civilization, with the single exception of Argentina. The present rate of increase is probably double the average rate of increase in Europe, and exceeds by one-sixth that of Mexico and by one-tenth that of Australia. It has been, prior to 1910, nearly double that of Canada. The only three nations having a larger population than that of the United States are the Chinese Empire, the British Empire, and the Russian Empire. The following table indicates the population and percentage of population increase of the principal foreign countries, as compared with that of the United States:

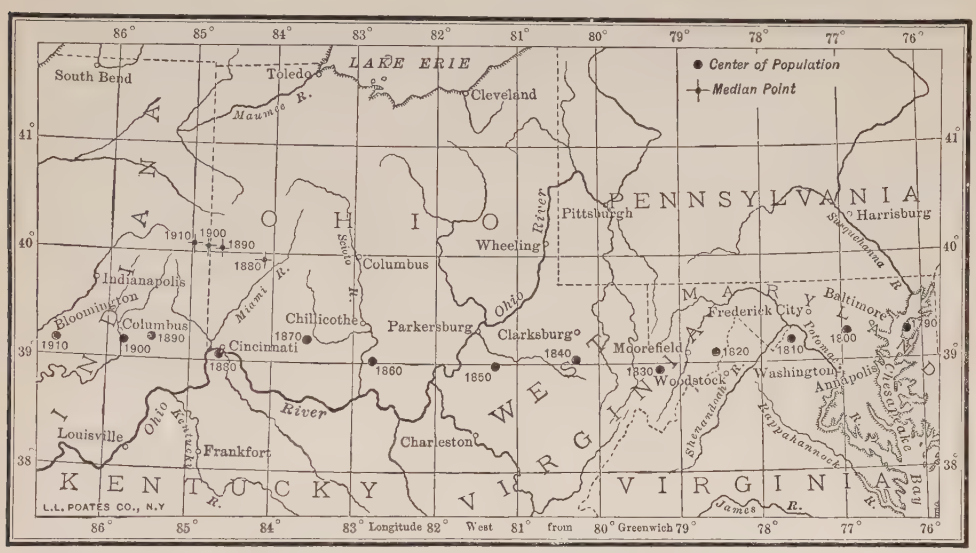
TABLE III.—INTERNATIONAL COMPARISON

Country	Latest Census		Preceding Census		Increase of Population	Per cent of Decennial Increase
	Date	Population	Date	Population		
Argentina	1895	3,954,911	1869	1,736,922	2,217,989	37.2
Australia (Commonwealth)	1901	3,767,443	1891	3,174,253	593,190	18.7
Mexico	1910	15,063,207	1900	13,545,462	1,517,745	----
German Empire	1910	64,903,423	1900	56,367,178	8,536,245	11.
Greece	1896	2,433,806	1889	2,187,208	246,598	15.3
Netherlands	1909	5,898,429	1899	5,104,137	794,292	15.
England and Wales	1911	36,075,269	1901	32,526,075	3,547,426	10.9
Denmark	1901	2,464,770	1890	2,185,335	279,435	11.6
Switzerland	1900	3.315,443	1888	2,917,754	397,689	11.2
Canada	1911	7,204,772	----	5,371,315	1,833,457	34.13
Scotland	1911	4,759,445	1901	4,472,103	287,342	----
Norway	1910	2,392,698	1900	2,221,477	171,221	----
Belgium	1900	6,693,810	1890	6,069,321	624,489	10.3
Hungary	1910	20,850,700	1900	19,254,559	1,596,141	----
Austria	1910	28,567,898	1900	26,150,708	2,417,190	----
Sweden	1910	5,476,441	1900	5,136,441	340,000	----
Italy	1901	32,475,253	1881	28,459,628	4,015,625	7.2
India	1901	294,266,701	1891	287,317,048	6,949,653	2.4
France	1901	38,590,500	1896	38,269,011	321,489	1.7
Ireland	1911	4,381,951	1901	4,456,546	125,405 *	----
United States	1910	75,994,575	1900	62,947,714	13,046,861	20.7

* Decrease

Hübner's *Geographisch-Statistiche Tabellen* for 1901 contains an interesting diagram representing graphically the population increase of the United States and of the leading European countries in the nineteenth century; it indicates that at the beginning of the century, Great Britain, Russia, France, Germany, Austria, Spain, and Turkey had larger populations than the United States; while at the close of the century this country had outstripped all but Russia, and was increasing at a more rapid rate than the latter.

Nebraska shows the smallest rate of increase, 0.3 per cent, Kansas follows with 3.0 per cent, and the three New England states of Vermont, Maine and New Hampshire follow. The greatest increase, 120.4 per cent, was in Washington, followed by Oklahoma, 109.7 per cent, and Idaho, 101.3 per cent. The states which show an increase exceeding 30 per cent, with the exception of Florida and New Jersey, are all located in the west, and make up a solid belt including one-third of the area of the United States. The rate of increase, 1900–1910, was



THE CENTER OF POPULATION OF THE UNITED STATES

Geographical Divisions.—In addition to the division by states, the United States census now divides the population by nine geographical divisions. The table on the following pages indicates the population of each division and state at the last three censuses, the increase from 1890 to 1910, with per cent of increase, the rank of each in population, 1900–1910, and the population of each state per square mile at the last two censuses.

This table is an instructive exhibit of the incidence of the population changes now in progress. The middle Atlantic, the west south central, the mountain, and the Pacific, are the only four of the nine geographical divisions which show an increase in 1910 equal to or in excess of the average rate of population increase in continental United States. The east north central and the west north central, comprising the prairie states, where the growth was most rapid thirty years ago, show an increase of but 14.2 and 12.5 respectively, and one state, Iowa, shows a decrease of 0.3 per cent—the only state in the Union where this occurred. It is largely explained by the emigration of agricultural population to the new farming districts of the Canadian Northwest. greater than during the previous decade in twenty-six of the forty-eight states, fifteen of them being west of the Mississippi River. It was less than during the previous decade in twenty-three states, sixteen of which are east of the Mississippi.

The rates of increase in the northern and southern states during the past thirty years were practically the same—in marked contrast with the record of previous censuses. But the character of the growth differs widely in the two sections, there being a relatively uniform growth in the South, equalizing a balance in the North between a lower rate of rural growth and a higher rate of urban growth. The fact that the rate of increase for the country as a whole was greater from 1900 to 1910 than during the previous decade was due wholly to the increase in immigration, as will appear when the full reports of the thirteenth census are available. It was further due to the increased rate of growth in the middle Atlantic, mountain, and Pacific divisions, the increase in the remaining six divisions being less than at the prior census. Thus immigration into the country, and migration within the country, are the two significant factors.

TABLE IV.—POPULATION OF CONTINENTAL UNITED STATES, BY STATES AND GEOGRAPHICAL DIVISIONS, 1890–1910, WITH NUMBER AND PER CENT OF INCREASE, 1890–1900 AND 1900–1910, AND RANKING OF THE STATES IN 1910 AND 1900

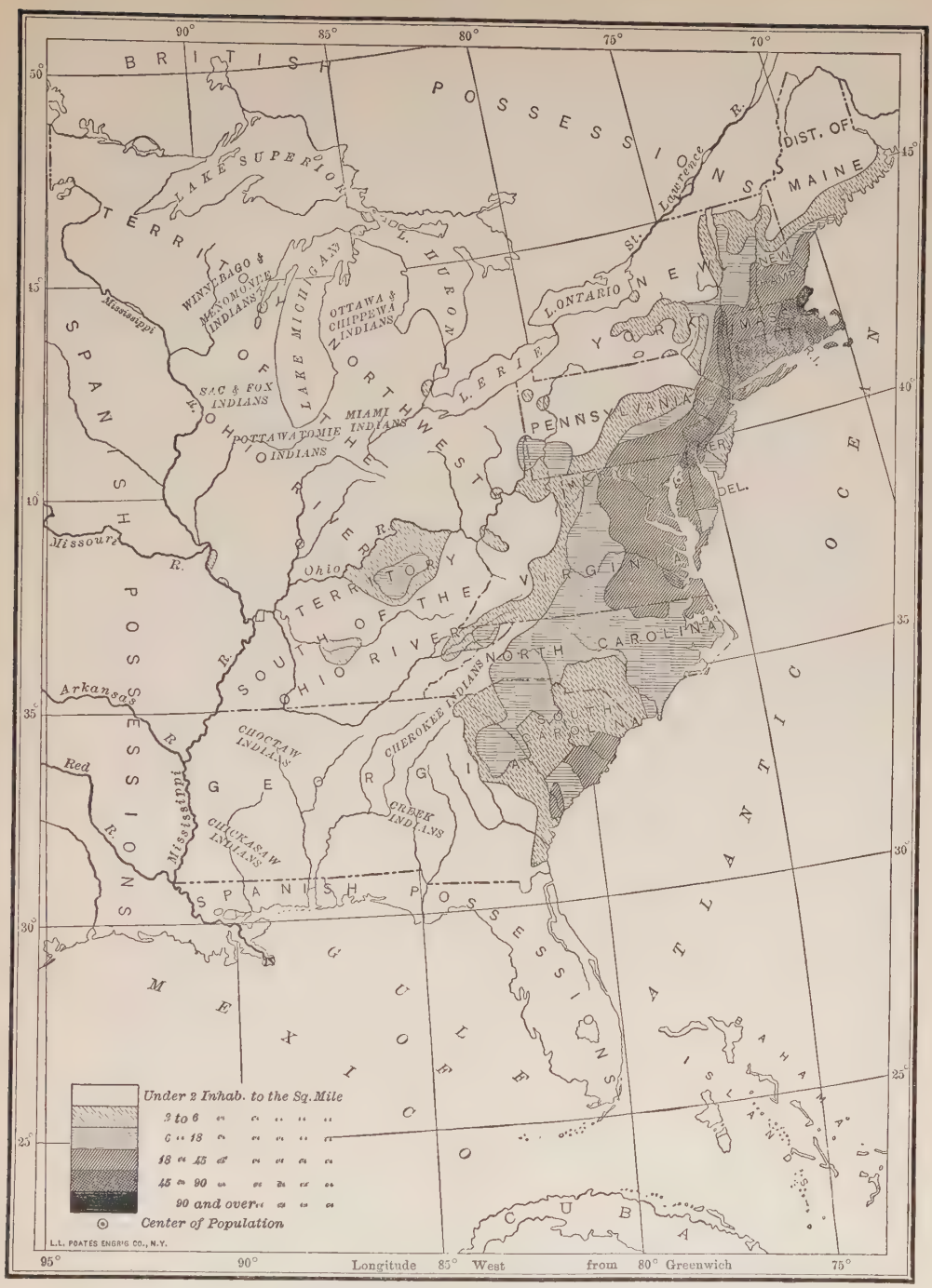
State	Population			Increase from 1900 to 1910		Increase from 1890 to 1900		Rank in Population [1]		Population Per Sq. Mile	
	1910	1900	1890 [2]	Number	Per Cent	Number	Per Cent	1910	1900	1910	1900
Continental United States	91,972,266	75,994,575	62,947,714	15,977,691	21.0	13,046,861	20.7	----	----	30.9	25.6
New England Division	6,552,681	5,592,017	4,700,749	960,664	17.2	891,268	19.0	----	----	----	----
Maine	742,371	694,466	661,086	47,905	6.9	33,380	5.0	34	31	24.8	23.2
New Hampshire	430,572	411,588	376,530	18,984	4.6	35,058	9.3	39	37	47.7	45.6
Vermont	355,956	343,641	332,422	12,315	3.6	11,219	3.4	42	39	39.0	37.7
Massachusetts	3,366,416	2,805,346	2,238,947	561,070	20.0	566,399	25.3	6	7	418.8	349.0
Rhode Island	542,610	428,556	345,506	114,054	26.6	83,050	24.0	38	35	508.5	400.7
Connecticut	1,114,756	908,420	746,258	206,336	22.7	162,162	21.7	31	29	231.3	188.5
Middle Atlantic Division	19,315,892	15,454,678	12,706,220	3,861,214	25.0	2,748,458	21.6	----	----	----	----
New York	9,113,614	7,268,894	6,003,174	1,844,720	25.4	1,265,720	21.1	1	1	191.2	152.5
New Jersey	2,537,167	1,883,669	1,444,933	653,498	34.7	438,736	30.4	11	16	337.7	250.7
Pennsylvania	7,665,111	6,302,115	5,258,113	1,362,996	21.6	1,044,002	19.9	2	2	171.0	140.6
East North Central Division	18,250,621	15,985,581	13,478,305	2,265,040	14.2	2,507,276	18.6	----	----	----	----
Ohio	4,767,121	4,157,545	3,672,329	609,576	14.7	485,216	13.2	4	4	117.0	102.1
Indiana	2,700,876	2,516,462	2,192,404	184,414	7.3	324,058	14.8	9	8	75.3	70.1
Illinois	5,638,591	4,821,550	3,826,352	817,041	16.9	995,198	26.0	3	3	100.7	86.1
Michigan	2,810,173	2,420,982	2,093,890	389,191	16.1	327,092	15.6	8	9	48.9	42.1
Wisconsin	2,333,860	2,069,042	1,693,330	264,818	12.8	375,712	22.2	13	13	42.2	37.4
West North Central Division	11,637,921	10,347,423	8,932,112	1,290,498	12.5	1,415,311	15.8	----	----	----	----
Minnesota	2,075,708	1,751,394	1,310,283	324,314	18.5	441,111	33.7	19	19	25.7	21.7
Iowa	2,224,771	2,231,853	1,912,297	[3] 7,082	[3] 0.3	319,556	16.7	15	10	40.0	40.2
Missouri	3,293,335	3,106,665	2,679,185	186,670	6.0	427,480	16.0	7	5	47.9	45.2
North Dakota	577,056	319,146	190,983	257,910	80.8	128,163	67.1	37	40	8.2	4.6
South Dakota	583,888	401,570	348,600	182,318	45.4	52,970	15.2	36	38	7.6	5.2
Nebraska	1,192,214	1,066,300	1,062,656	125,914	11.8	3,644	0.3	29	27	15.5	13.9
Kansas	1,690,949	1,470,495	1,428,108	220,454	15.0	42,387	3.0	22	22	20.7	18.0
South Atlantic Division	12,194,895	10,443,480	8,857,922	1,751,415	16.8	1,585,558	17.9	----	----	----	----
Delaware	202,322	184,735	168,493	17,587	9.5	16,242	9.6	47	45	103.0	94.0
Maryland	1,295,346	1,188,044	1,042,390	107,302	9.0	145,654	14.0	27	26	130.3	119.5
District of Columbia	331,069	278,718	230,392	52,351	18.8	48,326	21.0	43	41	5,517.8	4,645.3
Virginia	2,061,612	1,854,184	1,655,980	207,428	11.2	198,204	12.0	20	17	51.2	46.1
West Virginia	1,221,119	958,800	762,794	262,319	27.4	196,006	25.7	28	28	50.8	40.0

TABLE IV.—POPULATION OF CONTINENTAL UNITED STATES, BY STATES AND GEOGRAPHICAL DIVISIONS, 1890–1910, WITH NUMBER AND PER CENT OF INCREASE, 1890–1900 AND 1900–1910, AND RANKING OF THE STATES IN 1910 AND 1900—*Continued*

State	Population			Increase from 1900 to 1910		Increase from 1890 to 1900		Rank in Population [1]		Population Per Sq. Mile	
	1910	1900	1890 [2]	Number	Per Cent	Number	Per Cent	1910	1900	1910	1900
East South Central Division	8,409,901	7,547,757	6,429,154	862,144	11.4	1,118,603	17.4	----	----	----	----
North Carolina	2,206,287	1,893,810	1,617,949	312,477	16.5	275,861	17.1	16	15	45.3	38.9
South Carolina	1,515,400	1,340,316	1,151,149	175,084	13.1	189,167	16.4	26	24	49.7	44.0
Georgia	2,609,121	2,216,331	1,837,353	392,790	17.7	378,978	20.6	10	11	44.4	37.7
Florida	752,619	528,542	391,422	224,077	42.4	137,120	35.0	33	33	13.7	9.6
Kentucky	2,289,905	2,147,174	1,858,635	142,731	6.6	288,539	15.5	14	12	57.0	53.4
Tennessee	2,184,789	2,020,616	1,767,518	164,173	8.1	253,098	14.3	17	14	52.4	48.5
Alabama	2,138,093	1,828,697	1,513,401	309,396	16.9	315,296	20.8	18	18	41.7	35.7
Mississippi	1,797,114	1,551,270	1,289,600	245,844	15.8	261,670	20.3	21	20	38.8	33.5
West South Central Division	8,784,534	6,532,290	4,740,983	2,252,244	34.5	1,791,307	37.8	----	----	----	----
Arkansas	1,574,449	1,311,564	1,128,211	262,885	20.0	183,353	16.3	25	25	30.0	25.0
Louisiana	1,656,388	1,381,625	1,118,588	274,763	19.9	263,037	23.5	24	23	36.5	30.4
Oklahoma	1,657,155	[4] 790,391	[4] 258,657	866,764	109.7	531,734	205.6	23	[5] 30	23.9	11.4
Texas	3,896,542	3,048,710	2,235,527	847,832	27.8	813,183	36.4	5	6	14.8	11.6
Mountain Division	2,633,517	1,674,657	1,213,935	958,860	57.3	460,722	38.0	----	----	----	----
Montana	376,053	243,329	142,924	132,724	54.5	100,405	70.3	40	43	2.6	1.7
Idaho	325,594	161,772	88,548	163,822	101.3	73,224	82.7	45	46	3.9	1.9
Wyoming	145,965	92,531	62,555	53,434	57.7	29,976	47.9	49	49	1.5	1.0
Colorado	799,024	539,700	413,249	259,324	48.0	126,451	30.6	32	32	7.7	5.2
New Mexico	327,301	195,310	160,282	131,991	67.5	35,028	21.9	44	44	2.7	1.6
Arizona	204,354	122,931	88,243	81,423	66.2	34,688	39.3	46	48	1.8	1.1
Utah	373,351	276,749	210,779	96,602	34.9	65,970	31.3	41	42	4.5	3.4
Nevada	81,875	42,335	47,355	39,540	93.4	[3] 5,020	[3] 10.6	50	51	0.7	0.4
Pacific Division	4,192,304	2,416,692	1,888,334	1,775,612	73.5	528,358	28.0	----	----	----	----
Washington	1,141,990	518,103	357,232	623,887	120.4	160,871	45.0	30	34	17.1	7.8
Oregon	672,765	413,536	317,704	259,229	62.7	95,832	30.2	35	36	7.0	4.3
California	2,377,549	1,485,053	1,213,398	892,496	60.1	271,655	22.4	12	21	15.2	9.5

[1] Hawaii and Alaska, which do not appear in this table, rank as 48 and 51, respectively, both in the ranking for 1910 and 1900.
[2] Total population, including population of Indian Territory and Indian reservations, which were specially enumerated in 1890.
[3] Decrease.
[4] Includes the population of Indian Territory, which was 392,060 in 1900 and 180,182 in 1890.
[5] The territory of Oklahoma in 1900 ranked 38 and Indian Territory 39. The ranking for 1900 includes the population of Indian Territory with that of Oklahoma.

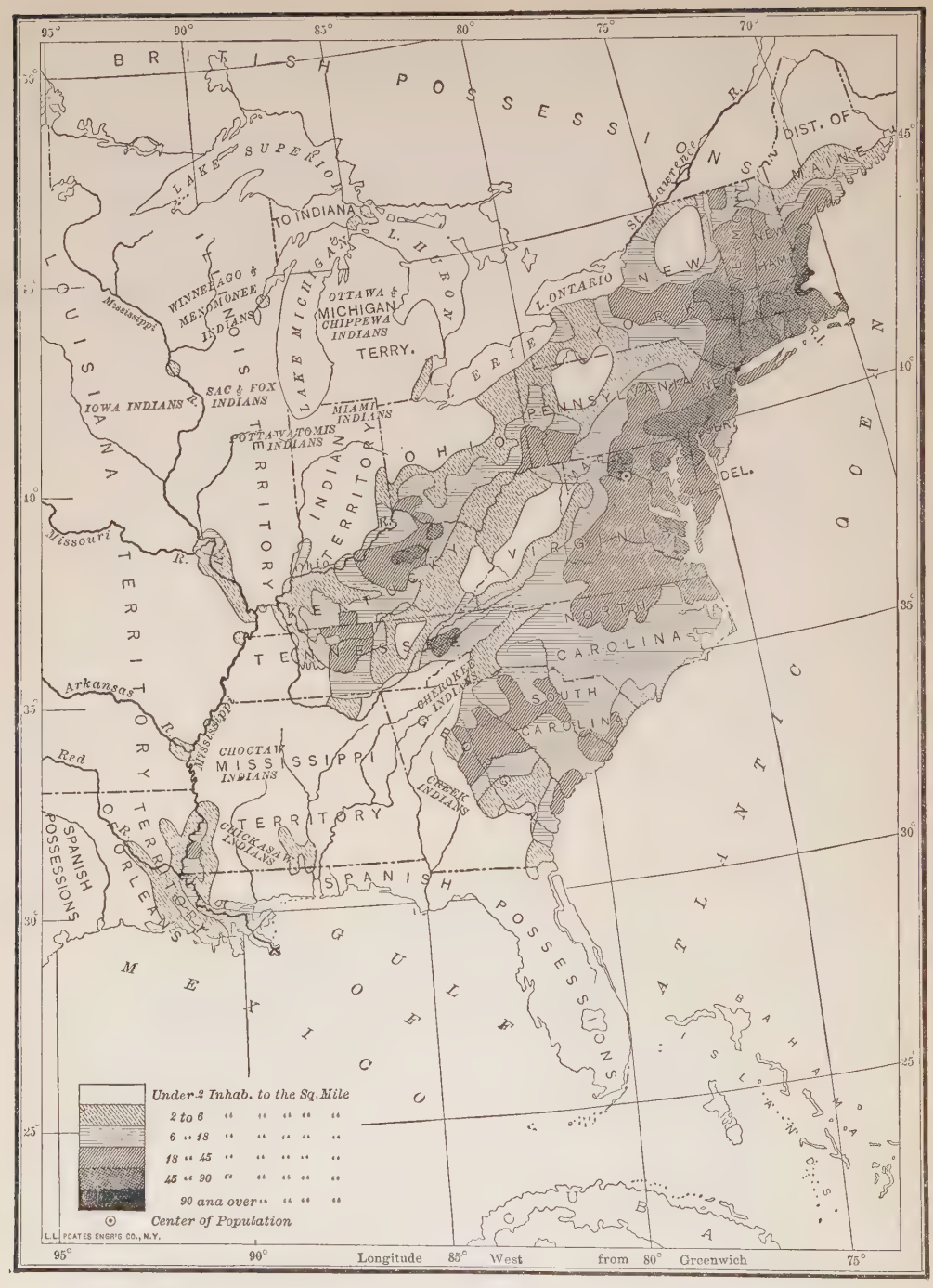
FRONTIER LINES
1790-1880.
Area of settlement
Frontier line, 1790
" " 1810
" " 1830
" " 1850
" " 1870
" " 1880
DOMINION OF CANADA
ATLANTIC OCEAN
PACIFIC OCEAN
GULF OF MEXICO
MEXICO
Longitude
West
from
Greenwich
PUBLIC LANDS
INDIAN TERRITORY
Missouri
Red
Arkansas
Rio Grande
Columbia
Snake
Colorado



DISTRIBUTION OF THE POPULATION IN 1790

The middle Atlantic division, in which are located New York and Pennsylvania, demonstrates the growth of the great manufacturing states in contrast with the comparatively stationary position of the agricultural states, with the exceptions above noted.

Urban Growth.—This is the most significant development of the census of 1910—a development further marked by the fact that the population growth of these manufacturing states is almost wholly confined to the cities, the strictly rural districts of these states show-



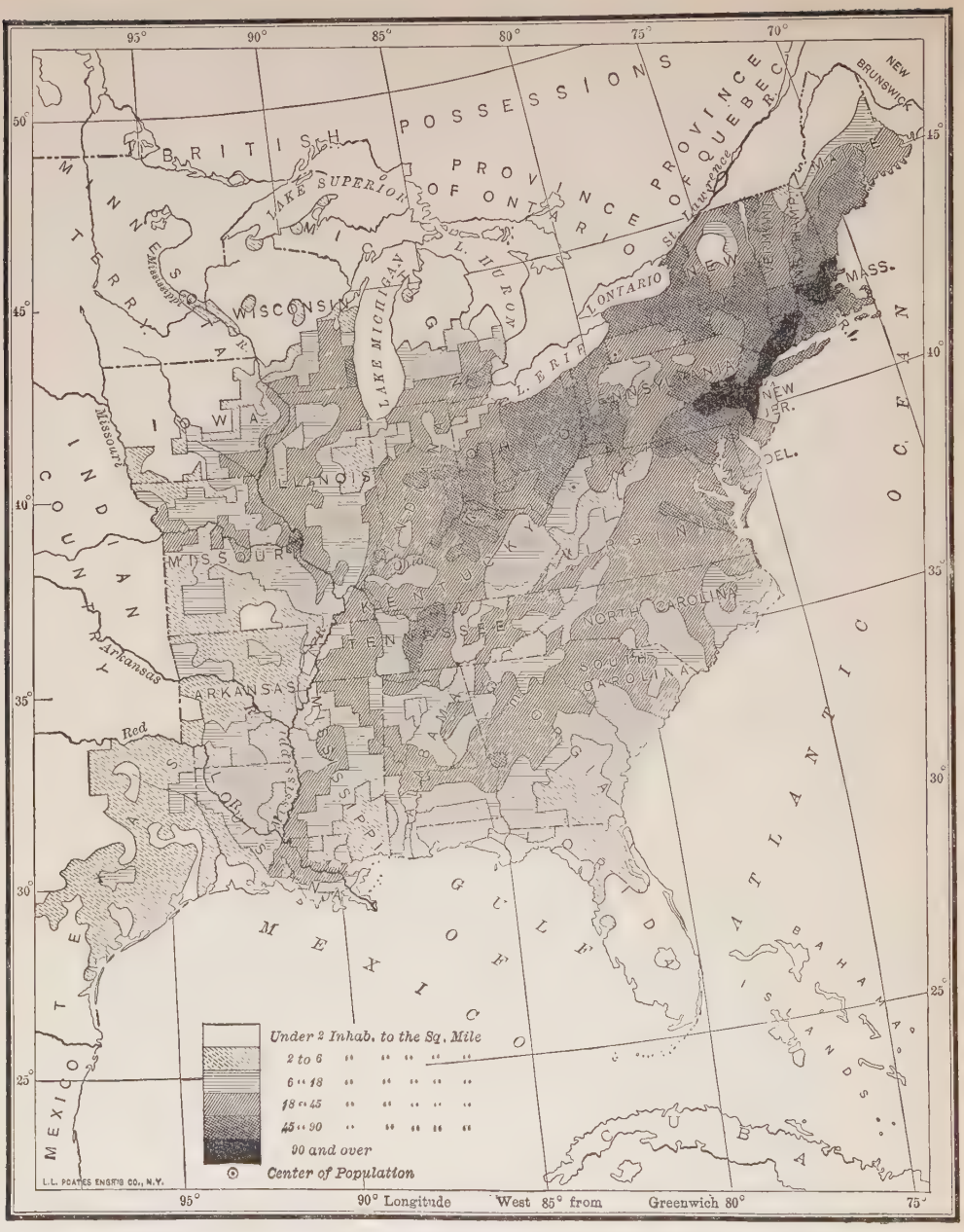
DISTRIBUTION OF THE POPULATION EAST OF THE 100TH MERIDIAN IN 1810

ing in many instances an actual decline in population. In New York, where there was an increase of 25.4 per cent, twenty of the sixty-one counties have decreased in population since 1900. In that year one-half of all the counties in the United States, of which there are 2800, either decreased in population or showed an increase of less than 15 per cent. In the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kentucky, and Tennessee, comprising the great northern middle section of the country, and

DISTRIBUTION OF THE POPULATION EAST OF THE 100TH MERIDIAN IN 1830

formerly the heart of the agricultural district, 440 out of 950 counties decreased from 1900 to 1910. In other words, with the exceptions noted, the population increase is almost wholly confined to municipalities, to increase in the urban population. Curiously enough, this population increase has been accompanied by a great increase in farm values and the value of farm products.

This rapid encroachment of the urban upon the rural population is the most significant deduction to be drawn from our recent



DISTRIBUTION OF THE POPULATION EAST OF THE 100TH MERIDIAN IN 1850

censuses. As defined by the Census Office, urban population is that residing in cities and other incorporated places of 2,500 inhabitants or more. The proportions of urban and rural population, under this classification, are shown in the following table:

TABLE V.—URBAN AND RURAL POPULATION

Population	Number			Per Cent Distribution		
	1910	1900	1890	1910	1900	1890
Total	91,972,266	75,994,575	62,947,714	100.0	100.0	100.0
Urban	42,623,383	30,780,875	22,708,430	46.3	40.5	36.1
Rural	49,348,883	45,213,700	40,239,284	53.7	59.5	63.9

It is thus obvious that by the time another federal census is taken, the percentage of the urban population will be larger than that in strictly rural districts. The incidence of this change, by states and geographical divisions, is shown in the following table:

TABLE VI.—URBAN POPULATION BY STATES AND GEOGRAPHICAL DIVISIONS

State or Territory	Population, 1910		Per Cent of Urban in Total Population		
	Total	Urban	1910	1900	1890
Continental United States	91,972,266	42,623,383	46.3	40.5	36.1
New England Division	6,552,681	5,455,345	83.3	79.9	75.8
Maine	742,371	381,443	51.4	48.6	45.2
New Hampshire	430,572	255,099	59.2	55.0	51.1
Vermont	355,956	168,943	47.5	40.5	35.2
Massachusetts	3,366,416	3,125,367	92.8	91.5	89.5
Rhode Island	542,610	524,654	96.7	95.1	94.5
Connecticut	1,114,756	999,839	89.7	87.2	83.5
Middle Atlantic Division	19,315,892	13,723,373	71.0	65.2	57.7
New York	9,113,614	7,185,494	78.8	72.9	64.9
New Jersey	2,537,167	1,907,210	75.2	70.6	60.7
Pennsylvania	7,665,111	4,630,669	60.4	54.7	48.6
East North Central Division	18,250,621	9,617,271	52.7	45.1	37.8
Ohio	4,767,121	2,665,143	55.9	48.1	41.0
Indiana	2,700,876	1,143,835	42.4	34.3	26.9
Illinois	5,638,591	3,476,929	61.7	53.9	44.5
Michigan	2,810,173	1,327,044	47.2	39.3	34.7
Wisconsin	2,333,860	1,004,320	43.0	38.2	33.2
West North Central Division	11,637,921	3,873,716	33.3	28.5	25.8
Minnesota	2,075,708	850,294	41.0	34.1	33.8
Iowa	2,224,771	680,054	30.6	25.6	21.2
Missouri	3,293,335	1,398,817	42.5	36.3	32.0
North Dakota	577,056	63,236	11.0	7.3	5.6
South Dakota	583,888	76,673	13.1	10.2	8.2
Nebraska	1,192,214	310,852	26.1	23.7	27.4
Kansas	1,690,949	493,790	29.2	22.5	19.1
South Atlantic Division	12,194,895	3,092,153	25.4	21.4	19.5
Delaware	202,322	97,085	48.0	46.4	42.2
Maryland	1,295,346	658,192	50.8	49.8	47.6
District of Columbia	331,069	331,069	100.0	100.0	100.0
Virginia	2,061,612	476,529	23.1	18.3	17.1
West Virginia	1,221,119	228,242	18.7	13.1	10.7
North Carolina	2,206,287	318,474	14.4	9.9	7.2
South Carolina	1,515,400	224,832	14.8	12.8	10.1
Georgia	2,609,121	538,650	20.6	15.6	14.0
Florida	752,619	219,080	29.1	20.3	19.8
East South Central Division	8,409,901	1,574,229	18.7	15.0	12.7
Kentucky	2,289,905	555,442	24.3	21.8	19.2
Tennessee	2,184,789	441,045	20.2	16.2	13.5
Alabama	2,138,093	370,431	17.3	11.9	10.1
Mississippi	1,797,114	207,311	11.5	7.7	5.4
West South Central Division	8,784,534	1,957,456	22.3	16.2	15.1
Arkansas	1,574,449	202,681	12.9	8.5	6.5
Louisiana	1,656,388	496,516	30.0	26.5	25.4
Oklahoma	1,657,155	320,155	19.3	7.4	3.7
Texas	3,896,542	938,104	24.1	17.1	15.6
Mountain Division	2,633,517	947,511	36.0	32.3	29.3
Montana	376,053	133,420	35.5	34.7	27.1
Idaho	325,594	69,898	21.5	6.2	----
Wyoming	145,965	43,221	29.6	28.8	34.3
Colorado	799,024	404,840	50.7	48.3	45.9
New Mexico	327,301	46,571	14.2	14.0	6.2
Arizona	204,354	63,260	31.0	15.9	9.4
Utah	373,351	172,934	46.3	38.1	35.7
Nevada	81,875	13,367	16.3	17.0	33.8
Pacific Division	4,192,304	2,382,329	56.8	46.4	42.5
Washington	1,141,990	605,530	53.0	40.8	35.6
Oregon	672,765	307,060	45.6	32.2	26.8
California	2,377,549	1,469,739	61.8	52.4	48.6

As a result of this concentration of municipal population, the United States now has three cities with a population of over one million (four, if Brooklyn is considered separately from New York); nineteen cities with populations of over 250,000, four of which, Newark, Los Angeles, Minneapolis and Jersey City, have advanced into this group since

DISTRIBUTION
of the
POPULATION
1870
Under 2 Inhab. per Sq. Mile
2 to 6
6 to 18
18 to 45
45 to 90
90 and over
Center of Population
CANADA
ATLANTIC OCEAN
GULF OF MEXICO
MEXICO
PACIFIC OCEAN
DOMINION
MINNESOTA
DAKOTA
NEBRASKA
KANSAS
INDIAN TERRITORY
TEXAS
WISCONSIN
ILLINOIS
MICHIGAN
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
MAINE
VERMONT
N.H.
MASS.
R.I.
CONN.
N.J.
DEL.
MARYLAND
LAKE MICHIGAN
L. SUPERIOR
L. HURON
L. ONTARIO
L. ERIE
MONTANA
WYOMING
COLORADO
NEW MEXICO
UTAH
NEVADA
ARIZONA
WASHINGTON
OREGON
IDAHO
PUBLIC LANDS
Missouri
Yellowstone
Snake
Columbia
Colorado
Red
Rio Grande
Longitude 100° West from 95° Greenwich
J. H. COLTON & CO. N.Y.
G.W. & C.B. COLTON & CO. N.Y.
J.L. PEATES ENGR'G CO., N.Y.

1900; fifty cities with a population of over 100,000; and 178 cities with a population of between 25,000 and 100,000. Seventy of this latter number have risen above 25,000 since 1900. The following table shows the fifty cities of over 100,000 population, with their population at the last three censuses, and the percentage of increase:

TABLE VII.—CITIES OF OVER 100,000 POPULATION IN 1910

City	Population			Per Cent of Increase	
	1910	1900	1890	1900 to 1910	1890 to 1900
Total for cities of over 100,000 population	20,302,138	15,199,375	11,470,364	33.6	32.5
Albany, N. Y.	100,253	94,151	94,923	6.5	[1] 0.8
Atlanta, Ga.	154,839	89,872	65,533	72.3	37.1
Baltimore, Md.	558,485	508,957	434,439	9.7	17.2
Birmingham, Ala.	132,685	38,415	26,178	245.4	46.7
Boston, Mass.	670,585	560,892	448,477	19.6	25.1
Bridgeport, Conn.	102,054	70,996	48,866	43.7	45.3
Buffalo, N. Y.	423,715	352,387	255,664	20.2	37.8
Cambridge, Mass.	104,839	91,886	70,028	14.1	31.2
Chicago, Ill.	2,185,283	1,698,575	1,099,850	28.7	54.4
Cincinnati, Ohio	363,591	325,902	296,908	11.6	9.8
Cleveland, Ohio	560,663	381,768	261,353	46.9	46.1
Columbus, Ohio	181,511	125,560	88,150	44.6	42.4
Dayton, Ohio	116,577	85,333	61,220	36.6	39.4
Denver, Colo.	213,381	133,859	106,713	59.4	25.4
Detroit, Mich.	465,766	285,704	205,876	63.0	38.8
Fall River, Mass.	119,295	104,863	74,398	13.8	40.9
Grand Rapids, Mich.	112,571	87,565	60,278	28.6	45.3
Indianapolis, Ind.	233,650	169,164	105,436	38.1	60.4
Jersey City, N. J.	267,779	206,433	163,003	29.7	26.6
Kansas City, Mo.	248,381	163,752	132,716	51.7	23.4
Los Angeles, Cal.	319,198	102,479	50,395	211.5	103.4
Louisville, Ky.	223,928	204,731	161,129	9.4	27.1
Lowell, Mass.	106,294	94,969	77,696	11.9	22.2
Memphis, Tenn.	131,105	102,320	64,495	28.1	58.6
Milwaukee, Wis.	373,857	285,315	204,468	31.0	39.5
Minneapolis, Minn.	301,408	202,718	164,738	48.7	23.1
Nashville, Tenn.	110,364	80,865	76,168	36.5	6.2
Newark, N. J.	347,469	246,070	181,830	41.2	35.3
New Haven, Conn.	133,605	108,027	81,298	23.7	32.9
New Orleans, La.	339,075	287,104	242,039	18.1	18.6
New York, N. Y.	4,766,883	3,437,202	[2] 2,507,414	38.7	37.1
Oakland, Cal.	150,174	66,960	48,682	124.3	37.5
Omaha, Neb.	124,096	102,555	140,452	21.0	[1] 27.0
Paterson, N. J.	125,600	105,171	78,347	19.4	34.2
Philadelphia, Pa.	1,549,008	1,293,697	1,046,964	19.7	23.6
Pittsburg, Pa.	533,905	[3] 451,512	[3] 343,904	18.2	31.3
Portland, Oreg.	207,214	90,426	46,385	129.2	94.9
Providence, R. I.	224,326	175,597	132,146	27.8	32.9
Richmond, Va.	127,628	85,050	81,388	50.1	4.5
Rochester, N. Y.	218,149	162,608	133,896	34.2	21.4
St. Louis, Mo.	687,029	575,238	451,770	19.4	27.3
St. Paul, Minn.	214,744	163,065	133,156	31.7	22.5
San Francisco, Cal.	416,912	342,782	298,997	21.6	14.6
Scranton, Pa.	129,867	102,026	75,215	27.3	35.6
Seattle, Wash.	237,194	80,671	42,837	194.0	88.3
Spokane, Wash.	104,402	36,848	19,922	183.3	85.0
Syracuse, N. Y.	137,249	108,374	88,143	26.6	23.0
Toledo, Ohio	168,497	131,822	81,434	27.8	61.9
Washington, D. C.	331,069	278,718	230,392	18.8	21.0
Worcester, Mass.	145,986	118,421	84,655	23.3	39.9

[1] Decrease.
[2] Estimated population in 1890 of the area of present New York. The population of New York as it existed in 1890 was 1,515,301.
[3] Includes population of Allegheny, which was, in 1900, 129,896, and in 1890, 105,287.

The ten largest cities in the world are shown in the following table, three of the ten being in the United States, New York ranking second and Chicago fifth:

TABLE VIII.—TEN LARGEST CITIES IN THE WORLD

City	Year of Census or Estimate	Population	City	Year of Census or Estimate	Population
1. London	1909	7,429,740	6. Vienna	1909	2,085,888
2. New York	1910	4,766,883	7. Berlin	1910	2,064,153
3. Paris	1906	2,763,393	8. St. Petersburg	1905	1,678,000
4. Tokyo	1908	2,186,079	9. Philadelphia	1910	1,549,008
5. Chicago	1910	2,185,283	10. Moscow	1907	1,359,254

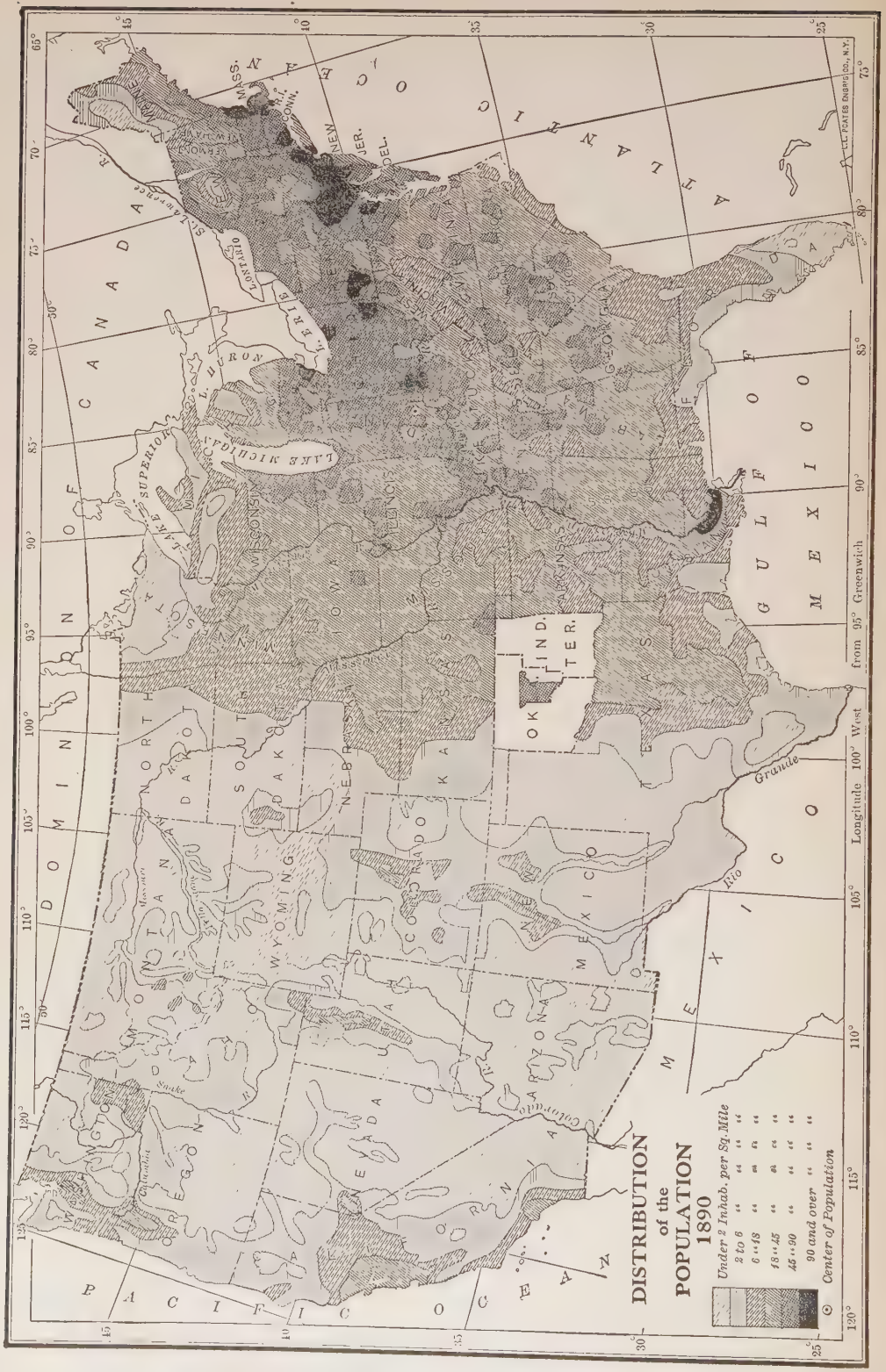

DISTRIBUTION
of the
POPULATION
1890
Under 2 Inhab. per Sq. Mile
2 to 6
6 " 18
18 " 45
45 " 90
90 and over
Center of Population
DOMINION OF CANADA
NEWFOUNDLAND
ATLANTIC OCEAN
GULF OF MEXICO
MEXICO
PACIFIC OCEAN
L. SUPERIOR
L. MICHIGAN
L. HURON
L. ERIE
L. ONTARIO
MINNESOTA
WISCONSIN
ILLINOIS
MICHIGAN
IOWA
MISSOURI
ARKANSAS
LOUISIANA
TEXAS
KANSAS
NEBRASKA
DAKOTA
NORTH DAKOTA
SOUTH DAKOTA
MONTANA
WYOMING
COLORADO
NEW MEXICO
ARIZONA
UTAH
NEVADA
IDAHO
WASHINGTON
OREGON
CALIFORNIA
OKLAHOMA
IND. TER.
Rio Grande
Columbia
Snake
Colorado
from 95° Greenwich
Longitude 100° West
C. C. Potter Engraver, N.Y.

TABLE IX.—POPULATION OF THE UNITED STATES, BY DIVISIONS AND STATES, WITH RANK ACCORDING TO POPULATION, AT EACH CENSUS, 1790–1910

	Geographic Division and State	1910		1900		1890 [1]		1880	
		Pop.	Rank	Pop.	Rank	Pop.	Rank	Pop.	Rank
1	Continental United States	91,972,266	--	75,994,575	--	62,947,714	--	50,155,783	--
	Geographic Divisions:								
2	New England	6,552,681	VII	5,592,017	VII	4,700,749	VII	4,010,529	VI
3	Middle Atlantic	19,315,892	I	15,454,678	II	12,706,220	II	10,496,878	II
4	East North Central	18,250,621	II	15,985,581	I	13,478,305	I	11,206,668	I
5	West North Central	11,637,921	IV	10,347,423	IV	8,932,112	III	6,157,443	IV
6	South Atlantic	12,194,895	III	10,443,480	III	8,857,922	IV	7,597,197	III
7	East South Central	8,409,901	VI	7,547,757	V	6,429,154	V	5,585,151	V
8	West South Central	8,784,534	V	6,532,290	VI	4,740,983	VI	3,334,220	VII
9	Mountain	2,633,517	IX	1,674,657	IX	1,213,935	IX	653,119	IX
10	Pacific	4,192,304	VIII	2,416,692	VIII	1,888,334	VIII	1,114,578	VIII
	New England:								
11	Maine	742,371	34	694,466	31	661,086	30	648,936	27
12	New Hampshire	430,572	39	411,588	37	376,530	33	346,991	31
13	Vermont	355,956	42	343,641	39	332,422	37	332,286	32
14	Massachusetts	3,366,416	6	2,805,346	7	2,238,947	6	1,783,085	7
15	Rhode Island	542,610	38	428,556	35	345,506	36	276,531	33
16	Connecticut	1,114,756	31	908,420	29	746,258	29	622,700	28
	Middle Atlantic:								
17	New York	9,113,614	1	7,268,894	1	6,003,174	1	5,082,871	1
18	New Jersey	2,537,167	11	1,883,669	16	1,444,933	18	1,131,116	19
19	Pennsylvania	7,665,111	2	6,302,115	2	5,258,113	2	4,282,891	2
	East North Central:								
20	Ohio	4,767,121	4	4,157,545	4	3,672,329	4	3,198,062	3
21	Indiana	2,700,876	9	2,516,462	8	2,192,404	8	1,978,301	6
22	Illinois	5,638,591	3	4,821,550	3	3,826,352	3	3,077,871	4
23	Michigan	2,810,173	8	2,420,982	9	2,093,890	9	1,636,937	9
24	Wisconsin	2,333,860	13	2,069,042	13	1,693,330	14	1,315,497	16
	West North Central:								
25	Minnesota	2,075,708	19	1,751,394	19	1,310,283	20	780,773	26
26	Iowa	2,224,771	15	2,231,853	10	1,912,297	10	1,624,615	10
27	Missouri	3,293,335	7	3,106,665	5	2,679,185	5	2,168,380	5
28	North Dakota	577,056	37	319,146	40	190,983	42	} [4] 135,177	40
29	South Dakota	583,888	36	401,570	38	348,600	[3] 35		
30	Nebraska	1,192,214	29	1,066,300	27	1,062,656	26	452,402	30
31	Kansas	1,690,949	22	1,470,495	22	1,428,108	19	996,096	20
	South Atlantic:								
32	Delaware	202,322	47	184,735	45	168,493	43	146,608	38
33	Maryland	1,295,346	27	1,188,044	26	1,042,390	27	934,943	23
34	District of Columbia	331,069	43	278,718	41	230,392	40	177,624	36
35	Virginia	2,061,612	20	1,854,184	17	1,655,980	15	1,512,565	14
36	West Virginia	1,221,119	28	958,800	28	762,794	28	618,457	29
37	North Carolina	2,206,287	16	1,893,810	15	1,617,949	16	1,399,750	15
38	South Carolina	1,515,400	26	1,340,316	24	1,151,149	23	995,577	21
39	Georgia	2,609,121	10	2,216,331	11	1,837,353	12	1,542,180	13
40	Florida	752,619	33	528,542	33	391,422	32	269,493	34
	East South Central:								
41	Kentucky	2,289,905	14	2,147,174	12	1,858,635	11	1,648,690	8
42	Tennessee	2,184,789	17	2,020,616	14	1,767,518	13	1,542,359	12
43	Alabama	2,138,093	18	1,828,697	18	1,513,401	17	1,262,505	17
44	Mississippi	1,797,114	21	1,551,270	20	1,289,600	21	1,131,597	18
	West South Central:								
45	Arkansas	1,574,449	25	1,311,564	25	1,128,211	24	802,525	25
46	Louisiana	1,656,388	24	1,381,625	23	1,118,588	25	939,946	22
47	Oklahoma	1,657,155	23	[6] 790,391	[7] 30	[6] 258,657	[3] 39	--------	--
48	Texas	3,896,542	5	3,048,710	6	2,235,527	7	1,591,749	11
	Mountain:								
49	Montana	376,053	40	243,329	43	142,924	45	39,159	45
50	Idaho	325,594	45	161,772	46	88,548	46	32,610	46
51	Wyoming	145,965	48	92,531	48	62,555	48	20,789	47
52	Colorado	799,024	32	539,700	32	413,249	31	194,327	35
53	New Mexico	327,301	44	195,310	44	160,282	44	119 565	41
54	Arizona	204,354	46	122,931	47	88,243	[3] 47	40,440	44
55	Utah	373,351	41	276,749	42	210,779	41	143,963	39
56	Nevada	81,875	49	42,355	49	47,355	49	62,266	43
	Pacific:								--
57	Washington	1,141,990	30	518,103	34	357,232	34	75,116	42
58	Oregon	672,765	35	413,536	36	317,704	33	174,768	37
59	California	2,377,549	12	1,485,053	21	1,213,398	22	864,694	24
60	Noncontiguous territory	1,429,885	--	1,262,055	--	122,042	--	33,426	--
61	Alaska	64,356	--	63,592	--	32,052	--	[8] 33,426	--
62	Hawaii	191,909	--	154,001	--	[9] 89,990	--	--------	--
63	Porto Rico	1,118,012	--	[10] 953,243	--	--------	--	--------	--
64	Military and naval [11]	55,608	--	91,219	--	--------	--	--------	--

[1] Includes population (325,464) of Indian Territory and Indian reservations specially enumerated in 1890, but not included in the general report on population in 1890.

[2] Includes persons (6,100 in 1840 and 5,318 in 1830) on public ships in the service of the United States, not credited to any geographic division or state.

[3] For 1890 the rank of South Dakota advances from 37 to 35 and that of Arizona from 48 to 47, when the population specially enumerated is included; and that of Oklahoma advances from 46 to 39, when the population of Indian Territory and Indian reservations specially enumerated are included.

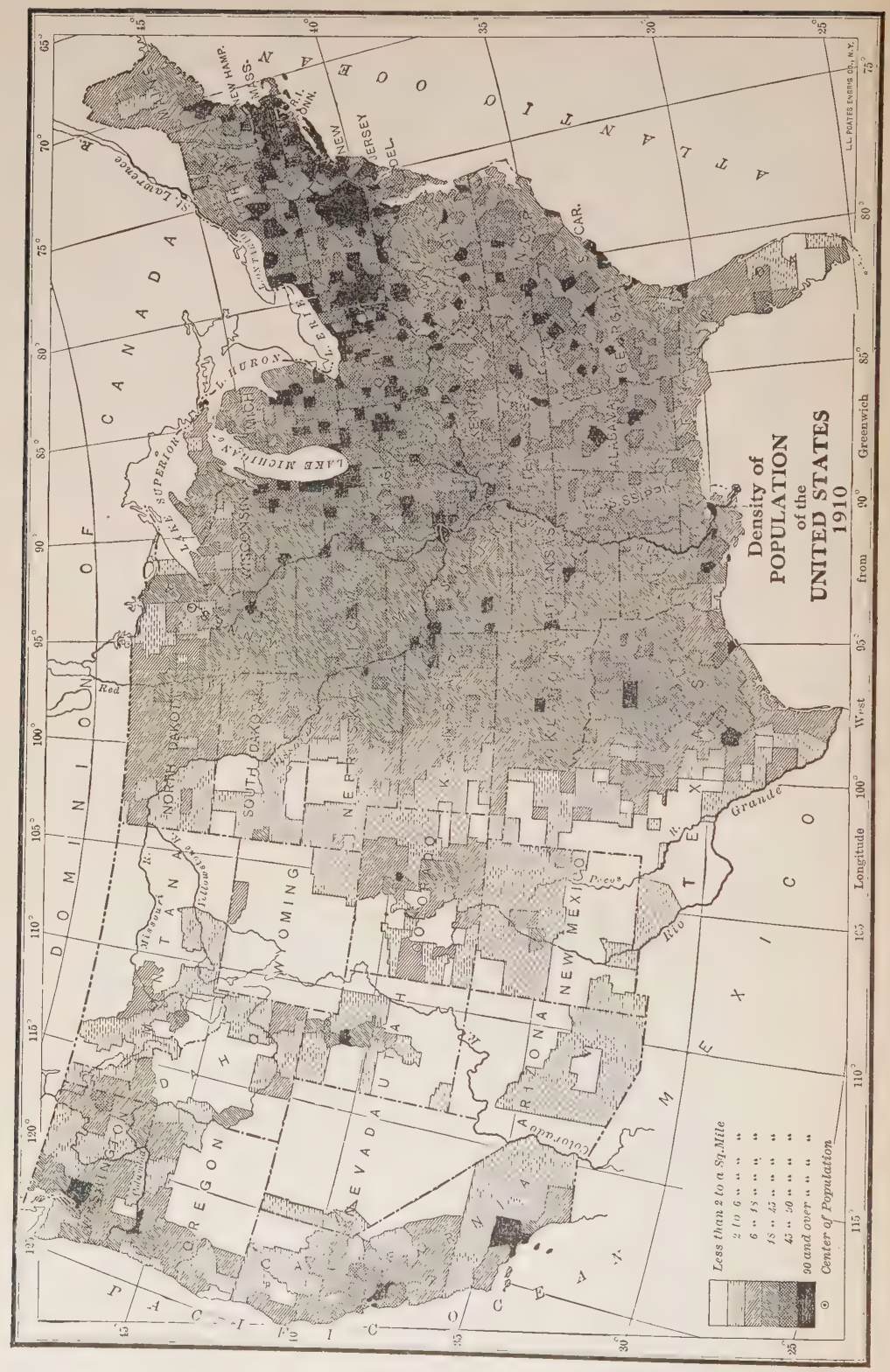

Density of
POPULATION
of the
UNITED STATES
1910
Less than 2 to a Sq. Mile
2 to 6 " " " "
6 " 15 " " " "
15 " 45 " " " "
45 " 90 " " " "
90 and over " " " "
Center of Population
DOMINION OF CANADA
ATLANTIC OCEAN
PACIFIC OCEAN
MEXICO
Longitude
from Greenwich
L.L. PRATT & Co., N.Y.

TABLE IX.—POPULATION OF THE UNITED STATES, BY DIVISIONS AND STATES, WITH RANK ACCORDING TO POPULATION, AT EACH CENSUS, 1790-1910.—*Continued*

	Geographic Division and State	1870		1860		1850		1840	
		Pop.	Rank	Pop.	Rank	Pop.	Rank	Pop.	Rank
1	Continental United States	38,558,371	--	31,443,321	--	23,191,876	--	[2]17,069,453	--
	Geographic Divisions:								
2	New England	3,487,924	VI	3,135,283	V	2,728,116	V	2,234,822	V
3	Middle Atlantic	8,810,806	II	7,458,985	I	5,898,735	I	4,526,260	I
4	East North Central	9,124,517	I	6,926,884	II	4,523,260	III	2,924,728	III
5	West North Central	3,856,594	V	2,169,832	VI	880,335	VII	426,814	VII
6	South Atlantic	5,853,610	III	5,364,703	III	4,679,090	II	3,925,299	II
7	East South Central	4,404,445	IV	4,020,991	IV	3,363,271	IV	2,575,445	IV
8	West South Central	2,029,965	VII	1,747,607	VII	940,251	VI	449,985	VI
9	Mountain	315,385	IX	174,923	IX	72,927	IX	--------	--
10	Pacific	675,125	VIII	444,053	VIII	105,891	VIII	--------	--
	New England:								
11	Maine	626,915	23	628,279	22	583,169	16	501,793	13
12	New Hampshire	318,300	31	326,073	27	317,976	22	284,574	22
13	Vermont	330,551	30	315,098	28	314,120	23	291,948	21
14	Massachusetts	1,457,351	7	1,231,066	7	994,514	6	737,699	8
15	Rhode Island	217,353	32	174,620	29	147,545	28	108,830	24
16	Connecticut	537,454	25	460,147	24	370,792	21	309,978	20
	Middle Atlantic:								
17	New York	4,382,759	1	3,880,735	1	3,097,394	1	2,428,921	1
18	New Jersey	906,096	17	672,035	21	489,555	19	373,306	18
19	Pennsylvania	3,521,951	2	2,906,215	2	2,311,786	2	1,724,033	2
	East North Central:								
20	Ohio	2,665,260	3	2,339,511	3	1,980,329	3	1,519,467	3
21	Indiana	1,680,637	6	1,350,428	6	988,416	7	685,866	10
22	Illinois	2,539,891	4	1,711,951	4	851,470	11	476,183	14
23	Michigan	1,184,059	13	749,113	16	397,654	20	212,267	23
24	Wisconsin	1,054,670	15	775,881	15	305,391	24	30,945	30
	West North Central:								
25	Minnesota	439,706	28	172,023	30	6,077	36	--------	--
26	Iowa	1,194,020	11	674,913	20	192,214	27	43,112	29
27	Missouri	1,721,295	5	1,182,012	8	682,044	13	383,702	16
28	North Dakota	[4]14,181	45	[5]4,837	42	--------	--	--------	--
29	South Dakota								
30	Nebraska	122,993	36	28,841	39	--------	--	--------	--
31	Kansas	364,399	29	107,206	33	--------	--	--------	--
	South Atlantic:								
32	Delaware	125,015	35	112,216	32	91,532	30	78,085	26
33	Maryland	780,894	20	687,049	19	583,034	17	470,019	15
34	District of Columbia	131,700	34	75,080	35	51,687	33	43,712	28
35	Virginia	1,225,163	10	1,596,318	5	1,421,661	4	1,239,797	4
36	West Virginia	442,014	27	--------	--	--------	--	--------	--
37	North Carolina	1,071,361	14	992,622	12	869,039	10	753,419	7
38	South Carolina	705,606	22	703,708	18	668,507	14	594,398	11
39	Georgia	1,184,109	12	1,057,286	11	906,185	9	691,392	9
40	Florida	187,748	33	140,424	31	87,445	31	54,477	27
	East South Central:								
41	Kentucky	1,321,011	8	1,155,684	9	982,405	8	779,828	6
42	Tennessee	1,258,520	9	1,109,801	10	1,002,717	5	829,210	5
43	Alabama	996,992	16	964,201	13	771,623	12	590,756	12
44	Mississippi	827,922	18	791,305	14	606,526	15	375,651	17
	West South Central:								
45	Arkansas	484,471	26	435,450	25	209,897	26	97,574	25
46	Louisiana	726,915	21	708,002	17	517,762	18	352,411	19
47	Oklahoma	--------	--	--------	--	--------	--	--------	--
48	Texas	818,579	19	604,215	23	212,592	25	--------	--
	Mountain:								
49	Montana	20,595	43	--------	--	--------	--	--------	--
50	Idaho	14,999	44	--------	--	--------	--	--------	--
51	Wyoming	9,118	47	--------	--	--------	--	--------	--
52	Colorado	39,864	41	34,277	38	--------	--	--------	--
53	New Mexico	91,874	37	93,516	34	61,547	32	--------	--
54	Arizona	9,658	46	--------	--	--------	--	--------	--
55	Utah	86,786	39	40,273	37	11,380	35	--------	--
56	Nevada	42,491	40	6,857	41	--------	--	--------	--
	Pacific:								
57	Washington	23,955	42	11,594	40	--------	--	--------	--
58	Oregon	90,923	38	52,465	36	13,294	34	--------	--
59	California	560,247	24	379,994	26	92,597	29	--------	--
60	Noncontiguous territory	--------	--	--------	--	--------	--	--------	--
61	Alaska	--------	--	--------	--	--------	--	--------	--
62	Hawaii	--------	--	--------	--	--------	--	--------	--
63	Porto Rico	--------	--	--------	--	--------	--	--------	--
64	Military and naval [11]	--------	--	--------	--	--------	--	--------	--

[4] Population for that part of Dakota territory taken to form North Dakota: 1880, 36,900; 1870, 2,405; and for that part taken to form South Dakota: 1880, 98,268; 1870, 11,776.

[5] Dakota territory.

[6] Includes population of Indian Territory: 1900, 392,060; 1890, 180,182.

[7] The territory of Oklahoma in 1900 ranked 38 and Indian Territory 39. The rank for 1900 includes the population of Indian Territory with that of Oklahoma.

TABLE IX.—POPULATION OF THE UNITED STATES, BY DIVISIONS AND STATES, WITH RANK ACCORDING TO POPULATION, AT EACH CENSUS, 1790–1910.—*Continued*

	Geographic Division and State	1830		1820		1810		1800		1790	
		Pop.	Rank	Pop.	Rank	Pop.	Rank	Pop.	Rank	Pop.	Rank
1	Continental U. S.	[8]12,866,020	--	9,638,453	--	7,239,881	--	5,308,483	--	3,929,214	--
	Geographic Divisions:										
2	New England	1,954,717	III	1,660,071	III	1,471,973	III	1,233,011	III	1,009,408	II
3	Middle Atlantic	3,587,664	II	2,699,845	II	2,014,702	II	1,402,565	II	958,632	III
4	East North Central	1,470,018	V	792,719	V	272,324	V	51,006	V	--------	--
5	West North Central	140,455	VII	66,586	VII	19,783	VII	--------	--	--------	--
6	South Atlantic	3,645,752	I	3,061,063	I	2,674,891	I	2,286,494	I	1,851,806	I
7	East South Central	1,815,969	IV	1,190,489	IV	708,590	IV	335,407	IV	109,368	IV
8	West South Central	246,127	VI	167,680	VI	77,618	VI	--------	--	--------	--
9	Mountain	--------	--	--------	--	--------	--	--------	--	--------	--
10	Pacific	--------	--	--------	--	--------	--	--------	--	--------	--
	New England:										
11	Maine	399,455	12	298,335	12	228,705	14	151,719	14	96,540	11
12	New Hampshire	269,328	18	244,161	15	214,460	16	183,858	11	141,885	10
13	Vermont	280,652	17	235,981	16	217,895	15	154,465	13	85,425	12
14	Massachusetts	610,408	8	523,287	7	472,040	5	422,845	5	378,787	4
15	Rhode Island	97,199	23	83,059	20	76,931	17	69,122	16	68,825	15
16	Connecticut	297,675	16	275,248	14	261,942	9	251,002	8	237,946	8
	Middle Atlantic:										
17	New York	1,918,608	1	1,372,812	1	959,049	2	589,051	3	340,120	5
18	New Jersey	320,823	14	277,575	13	245,562	12	211,149	10	184,139	9
19	Pennsylvania	1,348,233	2	1,049,458	3	810,091	3	602,365	2	434,373	2
	East North Central:										
20	Ohio	937,903	4	581,434	5	230,760	13	45,365	18	--------	--
21	Indiana	343,031	13	147,178	18	24,520	21	5,641	21	--------	--
22	Illinois	157,445	20	55,211	24	12,282	24	--------	--	--------	--
23	Michigan	31,639	27	8,896	27	4,762	25	--------	--	--------	--
24	Wisconsin	--------	--	--------	--	--------	--	--------	--	--------	--
	West North Central:										
25	Minnesota	--------	--	--------	--	--------	--	--------	--	--------	--
26	Iowa	--------	--	--------	--	--------	--	--------	--	--------	--
27	Missouri	140,455	21	66,586	23	19,783	23	--------	--	--------	--
28	North Dakota	--------	--	--------	--	--------	--	--------	--	--------	--
29	South Dakota	--------	--	--------	--	--------	--	--------	--	--------	--
30	Nebraska	--------	--	--------	--	--------	--	--------	--	--------	--
31	Kansas	--------	--	--------	--	--------	--	--------	--	--------	--
	South Atlantic:										
32	Delaware	76,748	24	72,749	22	72,674	19	64,273	17	59,096	16
33	Maryland	447,040	11	407,350	10	380,546	8	341,548	7	319,728	6
34	Dist. of Columbia	39,834	25	33,039	25	24,023	22	14,093	19	--------	--
35	Virginia	1,211,405	3	1,065,366	2	974,600	1	880,200	1	747,610	1
36	West Virginia	--------	--	--------	--	--------	--	--------	--	--------	--
37	North Carolina	737,987	5	638,829	4	555,500	4	478,103	4	393,751	3
38	South Carolina	581,185	9	502,741	8	415,115	6	345,591	6	249,073	7
39	Georgia	516,823	10	340,989	11	252,433	11	162,686	12	82,548	13
40	Florida	34,730	26	--------	--	--------	--	--------	--	--------	--
	East South Central:										
41	Kentucky	687,917	6	564,317	6	406,511	7	220,955	9	73,677	14
42	Tennessee	681,904	7	422,823	9	261,727	10	105,602	15	35,691	17
43	Alabama	309,527	15	127,901	19	--------	--	--------	--	--------	--
44	Mississippi	136,621	22	75,448	21	40,352	20	8,850	20	--------	--
	West South Central:										
45	Arkansas	30,388	28	14,273	26	1,062	26	--------	--	--------	--
46	Louisiana	215,739	19	153,407	17	76,556	18	--------	--	--------	--
47	Oklahoma	--------	--	--------	--	--------	--	--------	--	--------	--
48	Texas	--------	--	--------	--	--------	--	--------	--	--------	--
	Mountain:										
49	Montana	--------	--	--------	--	--------	--	--------	--	--------	--
50	Idaho	--------	--	--------	--	--------	--	--------	--	--------	--
51	Wyoming	--------	--	--------	--	--------	--	--------	--	--------	--
52	Colorado	--------	--	--------	--	--------	--	--------	--	--------	--
53	New Mexico	--------	--	--------	--	--------	--	--------	--	--------	--
54	Arizona	--------	--	--------	--	--------	--	--------	--	--------	--
55	Utah	--------	--	--------	--	--------	--	--------	--	--------	--
56	Nevada	--------	--	--------	--	--------	--	--------	--	--------	--
	Pacific:										
57	Washington	--------	--	--------	--	--------	--	--------	--	--------	--
58	Oregon	--------	--	--------	--	--------	--	--------	--	--------	--
59	California	--------	--	--------	--	--------	--	--------	--	--------	--
60	Noncontiguous territory	--------	--	--------	--	--------	--	--------	--	--------	--
61	Alaska	--------	--	--------	--	--------	--	--------	--	--------	--
62	Hawaii	--------	--	--------	--	--------	--	--------	--	--------	--
63	Porto Rico	--------	--	--------	--	--------	--	--------	--	--------	--
64	Military and naval[11]	--------	--	--------	--	--------	--	--------	--	--------	--

[8] Alaska was specially enumerated under the law, but the population was not included in the general report on population in 1880.

[9] According to the census taken as of Dec. 28, 1890, under the direction of the Hawaiian government.

[10] According to the census of Porto Rico taken in 1899 under the direction of the War Department.

[11] Persons in the military and naval service of the United States (including civilian employees, etc.) stationed abroad, not credited to any state or territory.

See CENSUS; FOREIGN ELEMENTS IN THE UNITED STATES; IMMIGRATION; NATIVE AMERICAN RACE; VITAL STATISTICS OF THE UNITED STATES.

References: Bureau of the Census *Reports;* W. F. Wilcox, *Supplementary Analysis and Derivative Tables of the 12th Census* (1906); W. S. Rossiter, *A Century of Popular Growth, 1790–1809* (1909). S. N. D. NORTH.

POPULIST PARTY. Beginnings.—The name "Populist party" is the popular designation for that American party whose official title is the "People's party." It first appeared in American politics in 1890, in the canvass for the state and congressional elections in a number of western and southern states. Its national organization was formed at a convention held at Cincinnati, Ohio, May 19, 1891.

Causes.—The party had for its antecedents the "Greenbackers" (*see*), the "Grangers" (*see*) and the "Union Labor Party" (*see* LABOR PARTIES), and was the immediate outgrowth of the political activities of the "Farmers' Alliance" (*see*). The party was formed, primarily, to champion the interests of the agrarian classes and of the workingmen. It sprang up as an expression of the social discontent with the existing economic conditions especially in the agrarian West. Such discontent was the immediate result of the low prices of farm produce together with the large number of mortgaged farms. The Populist party was a protest against the alleged domination of government and society by the railroads, the money power and the high-protectionist manufacturers of the East. It was based upon the belief that the government could and should regulate the economic functions of life in the interests of the common people. The movement was primarily an agrarian one, which attempted to enlist the support of the urban laborers to secure economic panaceas by means of legislation.

First Platform.—The first platform, adopted at the Cincinnati Convention in 1891, demanded: the abolition of the national banking system; government issue of fiat money in sufficient volume to transact the business of the country on a cash basis, such money to be loaned to the people at not more than two per cent per annum upon non-perishable products; the free, unlimited coinage of silver; a graduated income tax; the prohibition of alien ownership of land; the reclamation of all lands held by railroads and other corporations in excess of their actual needs, such land to be held for actual settlers only; a rigid national control and supervision, and, if necessary, government ownership of the means of, public communication and transportation; and the election of President, Vice-President and Senators by the direct vote of the people.

First National Convention.—The first national nomination convention of the party was held at Omaha, Nebraska, July 2, 1892. The preamble of the platform proclaimed the deplorable condition of society in which land was "concentrating in the hands of capitalists", and "the fruits of the toil of millions" were "bodily stolen to build up colossal fortunes for the few." The permanent union of the labor forces was declared and the community of interest between the rural and the urban laborers was emphasized. The demands adopted in the platform were substantially the same as those promulgated at the Cincinnati convention the previous year. James B. Weaver of Iowa was nominated for President, and James G. Field of Virginia for Vice-President. At the election in the following November the Populist ticket received a popular vote of 1,027,329 and 22 electoral votes, carrying four states and receiving one electoral vote in each of two others, besides electing nine representatives to Congress.

Campaign of 1896.—In consideration of the fact that the Democratic party in 1896 had adopted many of the Populists' principles and had made the financial question the paramount issue in its platform, the Populist convention, held at St. Louis, Missouri, July 22, 1896, endorsed William J. Bryan, the Democratic candidate for President. A large minority were also in favor of endorsing the Democratic nominee for Vice-President, Arthur Sewall of Maine, but a majority supported Thomas E. Watson of Georgia rather than allow a complete fusion with the Democratic party. In addition to the readoption of the principles set forth by the previous convention, the platform recognized that the "great and pressing issue" of the campaign was the "financial question." It demanded: the free and unrestricted coinage of silver and gold at the ratio of sixteen to one without waiting for the consent of foreign nations; postal savings-banks; government ownership of railroads and telegraph; the initiative and referendum; the employment of idle labor on public works during an industrial depression; and the abolition of government by injunction. Land grants to the Pacific railroad companies were particularly condemned and it was further demanded that the mineral lands be exempted from such land grants after, as well as before, the patent. In the November election a majority of the Populists voted for Sewall, for Vice-President. Bryan received 176 electoral votes, Sewall 149 and Watson 27.

Middle of the Road Populists.—Those Populists who voted for Watson and were in favor of maintaining their own organization without an alliance or fusion with any other party were called "Middle of the Road" Populists (*see*). At the close of the campaign of 1896, there was a marked opposition within the party, especially in the South, to any further alliance with the Democratic party. The first open rupture occurred at a state convention at

Grand Rapids, Michigan, February 14, 1897, at which two state organizations were formed, the regular or fusionist Populist organization and the "Middle of the Road" organization. An attempt was made to heal the breach at a convention of the Populist Reform Press Association held at Memphis, Tennessee, February, 1897, at which a committee was appointed to call a conference, if necessary, to heal the differences. Such a conference was held at Nashville, Tennessee, July 3–5, 1897, but was unsuccessful. A national "Middle of the Road" organization was formed and a national committee appointed with power to call a national convention. Such a convention met at Cincinnati, Ohio, September 5, 1898. The Regular Populists held a national convention at Omaha, Nebraska, February, 1900, which resulted in the complete separation of the factions.

Campaign of 1900.—The regular or fusionist wing of the party held its nominating convention at Sioux Falls, South Dakota, May 9, 1900, while on the same day the antifusionist or "Middle of the Road" wing held its convention at Cincinnati, Ohio. Since it was a foregone conclusion that Bryan would be the Democratic presidential candidate, the fusionist Populist convention nominated him by acclamation. Charles A. Towne was the vice-presidential nominee; but he withdrew, after the Democratic convention had met and nominated Adlai E. Stevenson. The Populist executive committee substituted Stevenson in Mr. Towne's place. The principles of the previous Populist platform were readopted, emphasis being placed upon the demand for free coinage of silver and the denunciation of the financial measures of the McKinley administration. In addition, sympathy for the Boers was expressed, imperialism (*see*) was denounced, and the following demands were made: exclusion of Mongolian and Malayan immigration; municipal ownership of public utilities; and home rule for territories and the District of Columbia. The Middle of the Road convention held at Cincinnati, Ohio, nominated Wharton Barker of Pennsylvania for President and Ignatius Donnelly, Minnesota, for Vice-President. The platform was significant only in that it emphasized the original Populist theory of fiat money, and considered the free coinage of both silver and gold at the ratio of sixteen to one as merely a temporizing expedient until a system providing for "a scientific and absolute paper money" could be secured. At the November election the Middle of the Road Populists received a popular vote of 50,232.

Campaigns of 1904 and 1908.—After the presidential campaign of 1900 both wings maintained national committees. However, the increase of the influence of the conservative branch of the Democratic party in the control of that party prepared the way for a reuniting of the factions of the Populist party. Through the initiative of the fusionist wing of the party a joint convention was held at Denver, in 1903, at which a united call was issued for the meeting of both committees at St. Louis, Missouri, February 22, 1903. At that meeting it was decided to dissolve the alliance with the Democratic party and nominate an independent party ticket. At the national nominating convention held at Springfield, Illinois, July 4, 1904, Thomas E. Watson of Georgia was nominated for President and Thomas H. Tibbles of Nebraska for Vice-President. The Populists polled only 114,753 votes at the November election. Although the national organization was continued, at the presidential election in 1908 the Populists were able to poll for their candidates, Thomas E. Watson of Georgia and Samuel W. Williams of Indiana, only 28,131 votes, of which about 17,000 were in Georgia.

Decline.—The causes of the rapid decline of this third party movement is found: (1) in the alliance of the Populist party with the Democratic party which resulted in the absorption of a large portion of the Populist party by the stronger organization; (2) in the extraordinary prosperity of the agricultural classes during the first decade of the twentieth century; (3) in the fact that a large number of their progressive demands were incorporated into the platforms of the traditional parties.

See DEMOCRATIC PARTY; FARMERS' ALLIANCE; GREENBACK PARTY; IMPERALISM; PRESIDENTIAL ELECTIONS; REPUBLICAN PARTY; SILVER COINAGE CONTROVERSY.

References: T. McKee, *National Conventions and Platforms* (5th ed., 1904); J. H. Hopkins, *Pol. Parties in the U. S.* (1900); "Presidential Campaign" in Appleton's *Annual Cyclopedia* (1891–1902); "Political Campaign" in *New International Year Book* (1908); W. A. Peffer, "Populist Party, The Mission of" in *North American Review*, CLVII (1893), 665–678; F. E. Haynes, "New Sectionalism" in *Quart. Journal of Econ.*, X (1896), 269–295; F. L. McVey, "Populist Movement" in *Am. Econ. Studies*, I, No. 3 (1896), 135–209; M. Butler, "People's Party" in *Forum*, XXVIII (1900), 658–662; T. E. Watson, "People's Party's Appeal" in *Independent*, LXV (1908), 882–886.

O. C. HORMELL.

PORK, OR PORK BARREL. An expression of recent origin denoting federal funds available for appropriations, particularly for the river and harbor and public building appropriations, which are too often looked upon by congressmen as funds (or pork) to be divided up by logrolling methods. O. C. H.

PORTO RICO. The Island.—Porto Rico, one of the insular possessions of the United States, is the fourth island in size of the West Indies, being the smallest of what are known as the Greater Antilles. It is nearly rectangular in

form, with an area of about 3600 square miles. Its population, according to the census taken by the United States in 1910 is 1,118,012. The original inhabitants were Carib Indians. These, as a separate race, have now entirely disappeared, though the present inhabitants in the interior show large admixture of this original Indian blood. The present population is returned as two-thirds white and one-third negro, though it is certain that a considerable number of those reported white have a very considerable amount of Indian and negro blood in their veins. The white blood is predominantly Spanish, and Spanish is the language of the people, though rapid progress in the use of the English language is taking place as a result of the American occupation.

PORTO RICO

Spanish Rule.—The island was visited by Columbus in 1493. In 1510 it was formally taken possession of in the name of Spain by Ponce de Leon, since when, until the American occupation, it remained a Spanish dependency. On the outbreak of the war of the United States with Spain the island was invaded by the American forces. The Treaty of Paris of December 10, 1898, establishing peace between the two countries, provided for the cession of the island to the United States.

Under Spain the administration of affairs was entirely in the hands of the captains general, or governors, who held office from the crown, were looked upon as its direct representatives and were responsible to it rather than to the Spanish nation or people.

The real political life of Porto Rico did not begin until 1808, since previous to that time the island was governed practically as a dependency of Hispañola, or Santo Domingo. In that year, it was conceded a measure of independent administrative functions and was given representation in the national parliament. From that time until the American occupation, the island followed the varying fortunes of the mother country, now obtaining more, now less, political privileges.

Annexation.—Though the treaty of peace was not signed until December 10, 1898, formal occupation of the island by the United States began October 18 of that year, when full possession of the island was assumed by the military forces. For a little over eighteen months the affairs of the island were managed by the military authorities under the general direction of the War Department. This government came to an end on May 1, 1900, being replaced by a purely civil government, created by Act of Congress approved April 12, 1900.

Government.—This act, known as the Foraker Act, after the name of its author, constitutes, with slight amendments, the present (1913) organic act of the island. The act provides that the government of the island shall be vested in an executive, consisting of a governor and six heads of administrative departments, a legislature of two houses—the executive council, and a house of delegates—and a system of courts of justice, consisting of a territorial court having the jurisdiction of United States circuit and district courts, and a supreme court of Porto Rico, with such inferior courts as the local legislature may from time to time create. The most characteristic feature of this government is the manner in which the members of the executive council, or upper house, are selected, and the powers given to that body. The law thus provides that the executive council shall be composed of eleven members, six of whom shall be the heads of the administrative departments, all, like the Governor, to be appointed by the President by and with the advice and consent of the Senate, for a term of four years. Not less than five of the eleven members must be native Porto Ricans. The members of the lower house, thirty-five in number, are selected every two years by what is practically manhood suffrage. The result of these provisions is to establish about as even a balance of power in the legislature between the Americans and the natives of the island as can well be secured, though the veto power possessed by the governor throws the final determination as to what legislation shall be enacted into American hands.

In spite of the many disagreements between the two houses in respect to details of legislation, this system has worked effectively. A large body of legislation of high character has

been enacted. On only one occasion has a deadlock resulted. This occurred in 1909 when the two houses were unable to agree upon the general appropriation bill for the support of the government. To settle this difficulty Congress passed an amendment to the organic act, by which it was provided that, in all cases of a failure on the part of the legislature to make due provision for the support of the government, the governor should promulgate a budget, the total of which should not exceed the amount appropriated for the previous fiscal year.

The functions of the executive council, however, are by no means limited to those of acting as the upper house of the legislative assembly. As such, it sits merely during the sixty days to which the regular sessions of the assembly are limited each year, or during such extraordinary sessions as may be called by the governor. Throughout the year it also sits in what is called executive session for the transaction of a large amount of important business. These duties were conferred upon it, partly by the organic act, and partly by laws enacted by the insular legislature. Among the most important of these duties are those of acting as a public utilities commission for the granting of all franchises and concessions of a public character, and of prescribing the rates and conditions of service that shall be observed by public service corporations; of administering the election laws; of acting as the approving body in respect to the sale of bonds by municipalities, or the granting of loans to these bodies from the insular treasury; of authorizing certain readjustments in the budget as enacted by the legislature; and of approving nominations to office made by the governor.

Relations with National Government.—Another characteristic and important feature of the government thus created by Congress for Porto Rico consists in the nature of the relations that it is provided should exist between the insular government and the national government. In making a decision regarding this phase of the government to be established for the island, Congress wisely adopted the policy of conferring the greatest autonomy practicable upon the insular government. It thus gave to such government full power to take all action necessary for the management of the local affairs of the island, subject only to the right of Congress to disapprove of legislation if it saw fit. It likewise relieved it from all administrative control from Washington further than is contained in the power of the President to remove persons appointed by him for cause, and in the obligation of the governor and the heads of departments to make annual reports regarding the manner in which they have discharged their duties. The fatal mistake, so often made in providing for the government of dependencies—that of attempting to administer affairs through officers of the government of the mother country—was thus avoided.

In respect to financial matters, Congress was equally liberal. It provided that the internal revenue laws of the United States should not extend to the island but that the latter should have the right to establish an excise system of its own; that all revenues, over and above the cost of collection, derived from custom dues paid on goods imported into the island from foreign countries should be paid into the insular instead of the federal treasury; that the duties to be paid on imports and exports passing between the island and the United States should be but fifteen per cent of the regular duties, and that no duties at all should be paid in respect to such commerce as soon as the island had provided for itself a revenue system adequate for its needs. In pursuance of this latter provision complete free trade between Porto Rico and the United States has existed since 1901.

As regards representation in Congress, Porto Rico has been treated as a territory, its citizens being directed to elect every two years a commissioner or delegate who has a seat in the House of Representatives, with the right to be heard but not to vote. Great prosperity has been enjoyed by the island under American rule. The value of property has advanced, wages have increased, the trade of the island, both as regards imports and exports, has increased several fold since 1900, millions of dollars have been spent on schools, roads and other improvements, and progress has been made in almost every direction.

See ANNEXATIONS TO THE UNITED STATES; DEPENDENCIES; DELEGATES.

References: *Census of Porto Rico* (1899); G. W. Davis, *Report on the Civil Government of Porto Rico* (1900); Governor of Porto Rico, *Annual Reports;* W. F. Willoughby, *Territories and Dependencies of the United States* (1905); C. A. Beard, *Readings in Am. Government and Politics* (1911), 388–390.

W. F. WILLOUGHBY.

PORTS, FREE. See FREE PORTS.

PORTS, JURISDICTION IN. Enclosed waters accessible from the sea and suitable for anchorage for ships are usually termed ports in distinction from the more open roadsteads and marginal sea over which a state may have jurisdiction. A state may exercise within its ports, such jurisdiction as it deems necessary for its own well-being; though generally a state does not extend its jurisdiction over foreign merchant vessels to acts taking place on board and not disturbing the peace of the port. Public vessels are, as regards their internal economy, entirely exempt from local jurisdiction though subject to harbor, sanitary, and similar regulations. Such vessels may be

required to leave a port. See MARE CLAUSUM; NEUTRALIZATION OF CANALS; VESSELS; WATER BOUNDARIES AND JURISDICTION. Reference: Glass, *Mar. Int. Law* (1885). G. G. W.

PORTS, PREFERENCE TO. The Constitution of the United States provides that no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another (Art. I, Sec. ix, ¶ 6). This clause was the natural result of the jealousies between the states, and of the contests and disputes that preceded the meeting of the Convention of 1787. The provision has recently been the subject of some consideration in connection with the regulation of interstate commerce. In Armour Packing Co. *vs.* U. S. (209 *U. S.* 56, 80), the Supreme Court said:"

> This provision was intended to prevent legislation intended to give, and having the effect of giving preference, to the ports of one State over another State. It may be true that the regulation of interstate commerce by rail has the effect to give an advantage to commerce wholly by water to ports which can be reached by means of inland navigation, but these are natural advantages and are not created by statutory law. The fact that regulation, within the acknowledged powers of Congress to enact, may affect the ports of one State more than those of another cannot be construed as a violation of this constitutional provision.

A. C. McL.

POSSE COMITATUS. By an ancient principle of the common law the sheriff or other executive officer of the court may summon any able bodied men within the jurisdiction of the court to assist him. Bystanders may thus be legally called upon to join in arresting persons; more often the sheriff calls upon such persons as he sees fit before starting out upon his mission. It is a clumsy system and breaks down whenever most of the people in the district are disinclined to support the law. In the United States, the principal question in regard to the posse is whether it includes soldiers. Efforts have repeatedly been made to call out troops as though they were individuals, subject only to the demand of the civil authority. This question was raised in the Whiskey Rebellion (*see*) when arrests were made by the troops. During reconstruction times, efforts were made to put the federal troops in the South at the disposal of the civil power; but the Federal Government insisted that they were not subject to orders by the local jurisdiction or punishable if they did not obey. See EXECUTION OF PROCESS; ORDER, MAINTENANCE OF; RIOTS, SUPPRESSION OF. References: G. N. Lieber, "Use of the Army in Aid of the Civil Power" in *No. Am. Rev.*, CLXIII, Nov., 1896; "Federal Aid in Domestic Disturbances" in *Sen. Docs.*, 57 Cong., 2 Sess., No. 209 (1903); E. C. Mason, *Veto Power* (1890).

A. B. H.

POST OFFICE DEPARTMENT. As pointed out in the article on the postal system of the United States, provision was made for a Postmaster General during colonial days. This office was continued after the adoption of the Constitution. It was not until 1829, however, that provision was made for a Post Office Department, and the Postmaster General became a member of the President's Cabinet. The organic act under which the Department is at present organized and conducted was approved June 8, 1872. This act made no radical change in prior existing conditions, its main purpose being to revise and consolidate the separate laws then in existence.

For purposes of administration, the Department, as at present organized, comprehends nine main divisions or branches, consisting, respectively, of: the office of the Postmaster General, the four offices of the assistant postmasters general, the inspection service, the postal savings system, the office of the purchasing agent, and the office of the chief clerk and superintendent of building. In addition to these there are two other offices of the government attached to other departments, whose duties relate exclusively to postal matters. These are the offices of assistant attorney general for the Post Office Department, who is an officer of the Department of Justice, though his office force are employees of the Post Office Department, and the auditor for the Post Office, who, and his office force, are employees of the Department of the Treasury. For all practical purposes, however, these offices should be treated as part of the administrative machinery for the conduct of postal affairs.

The duties of the chief clerk and superintendent of building, purchasing agent and inspection service are sufficiently indicated by their titles. All of the technical duties pertaining to the operation of the Postal Service are under the direct supervision of one or the other of the four assistant postmasters general. Thus, for example, the first assistant has charge of postmasters' appointments, salaries and allowances and the city delivery service; the second assistant, the railway mail service, foreign mails, miscellaneous transportation, and equipment, in other words matters having to do with transportation; the third assistant, financial affairs, stamps, money orders, registered mails, classification of mail matter, and redemption of damaged stamps and postal cards; and the fourth assistant, the rural mail service, dead letters, supplies, and topography. The postal savings system is administered as a separate service under the direction of the Postmaster General.

This division of duties is made at the discretion of the Postmaster General and is changed from time to time. The significant feature of this scheme of organization is that it follows functional lines. Each assistant postmaster general has the direction of certain

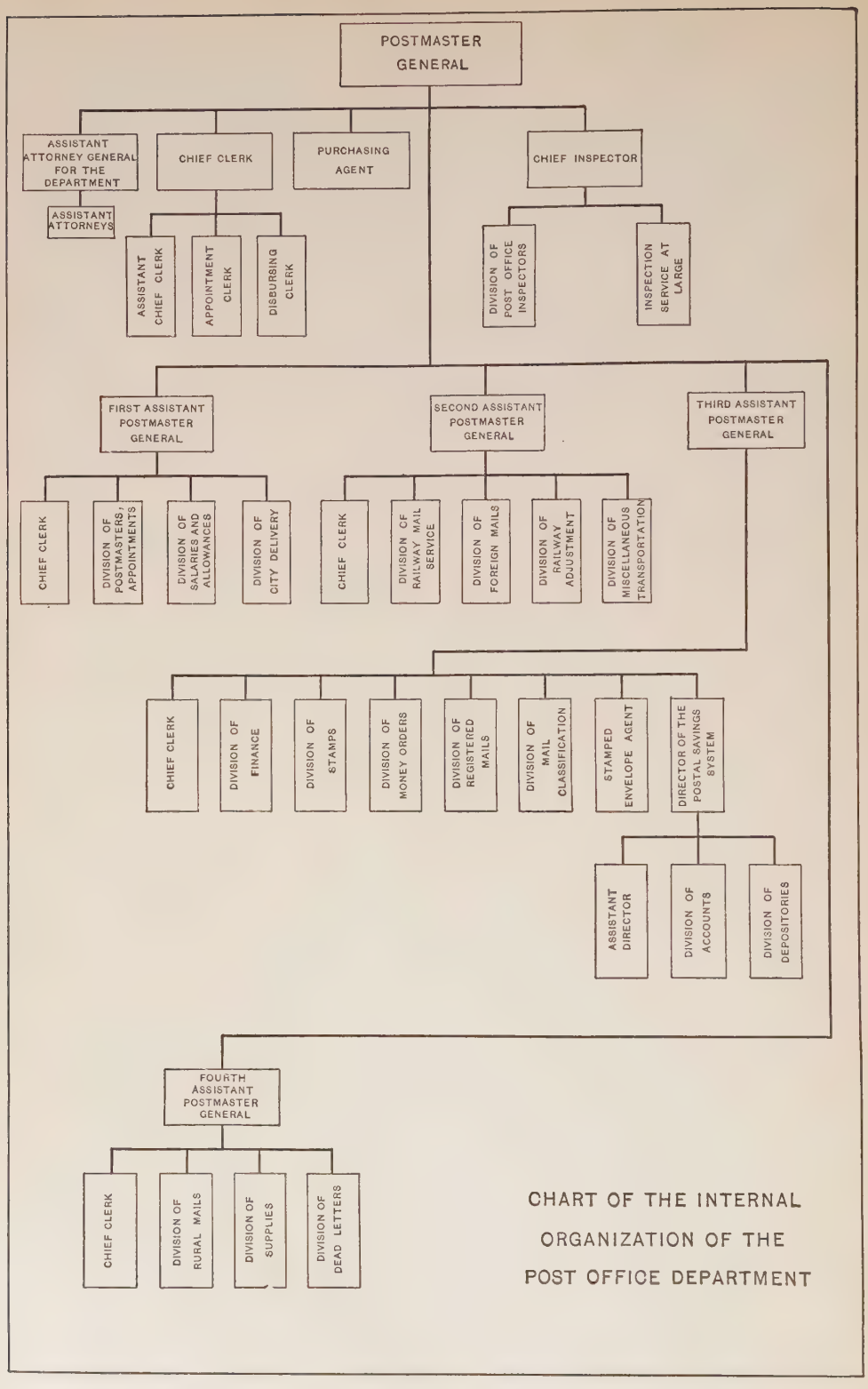


CHART OF THE INTERNAL ORGANIZATION OF THE POST OFFICE DEPARTMENT

classes of activities. The postmasters and other officials of the postal service in the field are thus, in effect, under the orders and direction of four or more superior officials. This form of organization has been criticized as resulting "practically in the creation within the Department of five separate administrations, working on their own lines with little or no mutual coöperation, and incidentally in a duplication of records which is entirely unnecessary and could scarcely have existed if the whole of the Department had been looked upon as a unit and administered as such" ("Preliminary Report of Joint Commission on Business Method of Post Office Department and Postal Service," February 10, 1908, *Sen. Reports*, 60 Cong., 1, 201, Sess. 15). The final report of this Commission (*Sen. Rep.*, 60 Cong., 2, Sess. 701) submitted December 17, 1908, furthermore points out as one of the chief structural weaknesses of the system the lack of permanency of the tenure of the chief administrative officers. On this point the report says:

> In this connection it is necessary only to point out that in the last seven years there have been four Postmasters General, three First Assistant Postmasters General, three Second Assistant Postmasters General, two Third Assistant Postmasters General and two Fourth Assistant Postmasters General, and that of all these officers but four ever had, prior to their appointment, any experience in postal affairs.

To remedy this condition of affairs, the Commission recommends a thorough reorganization of both the Post Office Department and the postal service. The most essential features of this scheme of reorganization which is embodied in the so-called Carter Bill, consist in the creation of the office of Director of Posts who, under the supervision of the Postmaster General, will have general superintendence and management of the postal service, of six assistant directors of posts to have charge of the "six main natural divisions of the service, namely, post offices, transportation, mail matter, appointments, finances, and supplies," in lieu of the four Assistant Postmasters General, and the division of the country upon administrative and not geographical considerations, into not less than 15 nor more than 20 postal districts each in charge of a district superintendent. Changes in many other respects are proposed of which limitations of space prevent consideration in this place.

See CABINET GOVERNMENT; EXECUTIVE DEPARTMENTS; POSTAL SYSTEM; POSTMASTER GENERAL.

References: D. T. Leech and W. L. Nicholson, *History of the Post Office Department* (1879); F. Huebner, "Our Postal System" in Columbia Hist. Soc., *Proceedings*, IX (1906), 126–174; M. Cushing, *The Story of Our Post Office* (1883); C. H. Van Tyne and W. G. Leland, *Guide to the Archives of the Govt. of the U. S.* (2d ed., 1907), 147–171.

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POST ROADS. The authority of the Federal Government to maintain and operate a postal service is contained in the Constitution (Art. I, Sec. viii, ¶ 7) which provides that Congress shall have power "to establish post-offices and postroads." This wording has given rise to much discussion regarding the intent of Congress. Did it intend to confer upon Congress the authority merely to determine where post offices should be located, and what should be deemed to be post roads, or to establish and operate a postal system? As Pomeroy, in his Constitutional Law, points out, "No other constitutional grant seems to be clothed in words which so poorly express its object, or so feebly indicate the particular measures which may be adapted to carry out its design. To establish post offices and post roads is the form of the grant; to create and regulate the entire postal system of the country is the evident intent." President Monroe in his communication to Congress in vetoing the Cumberland Road Bill (*see*), May 4, 1822, adopted the narrow construction of this grant. The Supreme Court of the United States, however, has uniformly adopted the other view, with the result that no doubt now exists regarding the power of Congress to provide for the operation of a postal service. Aside from the express grant of power that has been quoted it would seem that the power conferred upon Congress to regulate interstate commerce carries with it the authority to provide for a proper postal service. See CUMBERLAND ROAD; INTERNAL IMPROVEMENTS; POSTAL SYSTEM OF THE UNITED STATES. **References:** W. W. Willoughby, *Const. Law of the U. S.* (1911); J. Story, *Commentaries* (1857), § 1123. W. F. W.

POSTAL MONEY ORDERS. The use of money orders in the United States for the transmission of money dates from 1864. This system was established primarily to accommodate the thousands of soldiers in the field desiring to send money to their families. It has met such a real need and has proved of such value that it has been retained and constantly extended. On June 30, 1910, such orders could be obtained at 51,791 post offices, and during the year preceding, orders were issued to the amount of $76,918,036. The growth of the system is shown by the fact that the corresponding total in 1900 was but $32,060,983. Provision also exists for the issue of international money orders; during the year ending June 30, 1910, orders of this character to the amount of $99,742,686 were issued. Money orders are issued upon the payment to the postmaster of the sum called for by them and a fee varying in amount according to the sums represented. These orders are payable only to the persons in whose favor they are issued, or their order, and payment must be made at the post offices designated in the orders.

From 1864 to July 1, 1894, postal notes were issued in fixed denominations that did not have these limitations. Their issue was ordered discontinued by Act of January 27, 1894, on the ground, as stated in the report of the Postmaster General for 1895, that, being payable to bearer, they lacked the element of security afforded by money orders and their issue lessened the income derived from the fees for the latter. The revival of the use of these notes was strongly recommended by Postmaster General Hitchcox. He urged that Congress authorize the issue of notes of this character for fixed amounts not exceeding $10 to be payable to bearer on presentation at any post office. "This," he says, "would provide a simple and inexpensive means of transmitting small sums and would therefore render less frequent the sending of bills, coins and postage stamps through the mails, a practice that results in many losses and entails much expense on the department."

See EXCHANGE OF FUNDS; POSTAL SYSTEM OF THE UNITED STATES.

References: U. S. Postmaster General, *Annual Reports; Official Postal Guide* (annual).

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POSTAL SAVINGS BANKS. By act of June 25, 1910, authority was given for the establishment of postal savings banks. The arguments advanced in favor were: (1) the encouragement of thrift; (2) to provide a place of deposit free from any suspicion of insecurity; (3) to provide a market for government bonds. It was urged that there were considerable sections of the country not provided with savings institutions; that foreigners, particularly from southern Europe, were suspicious of banking institutions already in operation, and that in some states this was justified on account of lax supervision; and that postal banks would provide an outlet for the investment of United States bonds in case they should be discarded from use as a basis of national bank circulation.

On the other hand it was urged that local funds should not be diverted to the national treasury away from the region where the money was saved, to the detriment of local investment. On this point a compromise was reached, a part of the deposits being redeposited in local banks and a part under certain contingencies going to the Federal Government.

Deposits may be made for not more than $100 in any one month, and to total amount of not more than $500, exclusive of accumulated interest. Two per cent interest is allowed. Deposits may be exchanged as low as $20 for bonds. The system as introduced in January 3, 1911, was installed in one post office in each state and territory; but experience justified a rapid extension. The results have been most satisfactory. After three years' operation the deposits amount to more than $28,000,000.

See BANKING, PUBLIC REGULATION OF; BANKS, SAVINGS; DEPOSIT OF PUBLIC FUNDS.

References: E. W. Kemmerer, "The U. S. Postal Savings Banks" in *Pol. Sci. Quart.*, XXVI (1911), 462–499; Library of Congress, *List of Books Relating to Postal Savings Banks* (1908); *Am. Year Book, 1910*, 328, *ibid, 1911*, 308, *ibid, 1912*, 348, and year by year.

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POSTAL SERVICE, FRAUD ORDERS OF.

See FRAUD ORDERS OF THE POSTAL SERVICE.

POSTAL SYSTEM OF THE UNITED STATES. **Pre-Constitutional Precedents.**—The postal system of the country antedates the organization of the government. Massachusetts in 1639 and Virginia in 1657 enacted legislation looking to the provision of postal facilities. In 1710 the postal system of Great Britain was reorganized and New York was made one of the principal offices. In 1737 Benjamin Franklin was made postmaster at Philadelphia. On account of the ability with which he conducted this office he was made deputy-postmaster for America, a position which roughly corresponds to that of Postmaster General today. July 26, 1775, the Continental Congress resolved "that a Postmaster General be appointed for the United Colonies who shall hold office at Philadelphia." The Constitution, adopted in 1789, provided (Art. I, Sec. viii, ¶ 7) that Congress shall have control of the postal system of the country. At that time the system embraced about 70 post offices with an aggregate annual revenue of about $30,000.

Functions.—Consisting originally merely of a service for the transportation of letters and other like matter, the system has constantly grown in complexity, through the assumption of new duties, as imposed upon it by law, and the provision of additional facilities. As at present organized and conducted, the postal system performs at least four distinct functions: (1) the collection, transportation and distribution of mail matter; (2) the operation of a system of money orders for the transfer of money; (3) the operation of a postal saving system, imposed upon it by the Act of June 25, 1910; and (4) the operation of a parcel post system in accordance with an act of Aug. 24, 1912, which went into operation Jan. 1, 1913.

Organization.—The service as a whole, considered from an administrative standpoint, consists of two distinct parts: the Post Office Department proper at Washington, at the head of which is the Postmaster General, a member of the President's Cabinet; and the field service, or Postal Service as it is usually denominated. The organization and activities of the Post Office Department, and the powers and duties of the Postmaster General (*see*) are considered elsewhere.

The operations of the postal service are performed through three classes of agencies: (1) post offices, of which there are four classes; (2) delivery service, which can be further divided into city delivery and rural delivery; (3) transportation, which can be divided into a number of heads corresponding to the means of transportation employed.

The division of post offices into classes corresponds to the classification of postmasters into those of the first class, second class, third class and fourth class. Postmasters of the first class include all those receiving a salary of $3,000 or over; those of the second class those receiving a salary of less than $3,000 but not less than $2,000; those of the third class those receiving less than $2,000 but not less than $1,000; and those of the fourth class those whose annual compensation, exclusive of their commissions on the money order business of their offices, amounts to less than $1,000. Postmasters of the first three classes are appointed by the President by and with the advice and consent of the Senate; those of the fourth class by the Postmaster General. The salaries of postmasters of the first three classes are fixed by the Act of March 3, 1883, and depend upon the gross receipts of their offices. Third class postmasters receive, in addition to their salaries, a fee of three cents per money order issued. Fourth class postmasters receive the whole of the box rents collected and a commission on the cancellation of stamps, post cards, etc., mailed at their offices, sale of waste paper, etc., calculated on a graduated scale with a limit of $250 per quarter.

On July 1, 1911, there were 59,580 post offices, of which 7,592 were of the presidential class, and 51,988 of the fourth class. Of the former, 398 were of the first class, 1,707 of the second class, and 5,487 of the third class. On July 1, 1912, the number of post offices had declined to 58,729, in continuation of the reduction which has been in progress since 1901, when the number reached its highest point, 76,945.

Transportation.—The transportation service includes two branches which have to do, respectively, with domestic and foreign transportation. The domestic branch in turn includes two divisions: the railway mail service and contract service. The railway mail service combines the two functions of a post office for the assorting of mail for distribution, and its transportation. In order that the first function may be performed the use of specially designed cars is necessary. These cars, which are in effect traveling post offices, are furnished by the railroads, but they are manned by employees of the postal service. The idea of a service of this character was first brought to the attention of the Post Office Department in 1847 by First Assistant Postmaster Hobbie, who was impressed with the advantages of such a system as in operation in England. It was not until 1862, however, that the first railway post office was established in this country. The system was rapidly extended until today it constitutes one of the most important and interesting features of the postal service. The expenditures for this service during the year ending June 30, 1911, was $20,152,904.18 and the number of officials and clerks employed on June 30 of that year, 17,028.

All mail matter not transported in these cars is handled in bulk by the railroads and other transportation agencies in accordance with the terms of contracts entered into between them and the government. The Department distinguishes among the following seven classes of contract transportation services: (1) contract railway service; (2) screen wagon service; (3) mail messenger service; (4) electric car service; (5) steamboat service; (6) pneumatic tube service; (7) Alaskan star service. The Department is now experimenting with an eighth service, that of aviation. At the present time one of the most important problems before the Department and Congress has to do with the payments that should be made to railroads and other transportation agencies for the provision and hauling of mail cars and the transportation of mail matter in bulk. This subject was considered by a special commission the appointment of which was authorized by Act of March 4, 1911.

Cost of Postal Service.—The total amount paid to the railroads in 1911 was $50,583,123, as compared with $49,405,311 in 1910; to other means of transportation $13,175,366, as compared with $12,534,500; and for the transportation of the foreign mail, $3,315,349, as compared with $3,204,130.

The total revenue, expenditures and deficit or profit of the post office since 1900, as reported by the Post Office Department, are shown in the following table:

POSTAL FINANCES (1900-1911)

Year	Postal Revenues	Postal Expenditures	Deficit
1900	$102,354,579	$107,740,267	$5,385,688
1905	152,826,585	167,399,169	14,572,584
1906	167,932,782	178,449,778	10,576,996
1907	183,585,006	190,238,288	6,653,282
1908	191,478,663	208,351,886	16,873,223
1909	203,562,383	221,004,103	17,441,720
1910	224,128,658	229,977,225	5,848,567
1911	237,879,832	237,648,926	230,897 [1]

[1] Excess.

The increase in the annual expenditures is distributed among the various services as follows:

POSTAL EXPENDITURES (1900–1911)

	1900	1905	1910	1911
Service in postoffice	$51,214,498	$73,944,920 [1]	$107,770,710 [1]	$112,838,369
Railway mail service	8,839,767	13,289,368	19,389,414	20,106,909
Rural delivery service	420,499	20,824,269	37,073,733	37,145,757
Railway mail pay	37,315,724	45,040,564	49,405,311	50,583,123
Other means of transportation	7,794,212	11,302,795	12,534,501	13,175,366
Transportation foreign mail	2,155,567	2,832,432	3,204,130	3,315,349

[1] Accounts as revised in 1911.

The free delivery service of the postal service is considered in a separate contribution (*see* RURAL DELIVERY).

See FRAUD ORDERS; PARCEL POST; RURAL FREE DELIVERY; and under MAIL; POST; POSTAL.

References: *U. S. Official Postal Guide* (annual); Joint Commission on Business Methods of Post Office Department and Postal Service, "Preliminary Report" in *Sen. Rep.*, 60 Cong., 1 Sess., ¶ 201, "Final Report" in *Sen. Rep.*, 60 Cong., 2 Sess., ¶ 701; Postmaster General, *Annual Reports;* C. C. Huebner, *American State Papers;* D. D. Leech and W. L. Nicholson, *Our Postal System* (1906); J. A. Fairlie, *National Administration* (1905), ch. xii; *Am. Year Book, 1910*, 532; *ibid, 1911*, 546–47; *ibid, 1912*, 534–36, and year by year.

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POSTAL UNION, UNIVERSAL. In order that the facilities of the postal service may extend to communications between different countries, provision must be made for a machinery through which matters of common interest to the several countries may be adjusted. This is accomplished through the Universal Postal Union, an international institution with headquarters at Berne, Switzerland. The operations of this institution are regulated by a treaty concluded at Berne, October 9, 1874. Almost all civilized nations of the world are now parties to this treaty and as such members of the union. A bureau of international postal statistics is operated at Berne in connection with the union. See INTERNATIONAL UNIONS; POSTAL SYSTEM OF THE UNITED STATES.

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POSTMASTER GENERAL. The Postmaster General is the head of the Post Office Department, and as such the directing head of the federal postal service. Since 1829 he has been a member of the President's Cabinet. His compensation is $12,000 per annum. Like other Cabinet officers he is appointed by the President by and with the advice and consent of the Senate. His position is unique, however, in that, in accordance with the provisions of the act of June 8, 1872, giving to the Post Office Department its present organization, his tenure of office is "during the term of the President by whom he is appointed and for one month thereafter, unless sooner removed," and for his removal the advice and consent of the Senate is required. The act of 1872 it will be noted was passed at a time when the tenure of office acts were in full force. These acts were incorporated into the Revised Statutes in 1880 as section 1767 to 1772 inclusive. As the repealing act of 1887 specifically repealed these sections only, the law regarding the appointment and tenure of the Postmaster General remained unchanged.

The most significant fact regarding the powers and duties of the Postmaster General is the wide discretion that is vested in him in respect to the practical administration of his department and of the postal service. With the exception of the assistant postmasters general and the purchasing agent, who are appointed by the President, he appoints all officers and employees of the Post Office Department. He likewise appoints the fifty thousand odd fourth class postmasters. He has almost a free hand in respect to the organization of his department and the distribution of duties among the four assistant postmasters general. He contracts with the railroad and steamship lines for the transportation of mails. Subject to the approval of the President, he makes postal treaties with foreign governments. He establishes new post offices and discontinues ones in existence as the needs of the public and the service seem to demand. Within the limitations of appropriations, he extends the rural free delivery system and in other respects has discretion in respect to the extension of the service. To an unusual degree, therefore, the Postmaster General, among the heads of departments, exercises direct control over, and is responsible for the manner in which the affairs of his department are conducted.

See CABINET; EXECUTIVE DEPARTMENTS; POST OFFICE DEPARTMENT; POSTAL SYSTEM.

Reference: H. B. Learned, *The President's Cabinet* (1911).

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POSTMASTERS GENERAL. From 1789 till 1829 the following Postmasters General served without the rank of Cabinet officers:

1789 (Sept. 26), S. Osgood.
1791 (Aug. 12), T. Pickering.
1795 (Feb. 25), J. Habersham.
1801 (Nov. 28), G. Granger.
1814 (Mar. 17), R. J. Meigs, Jr.
1823 (June 26), J. McLean.

In 1829 provision was made for a Post Office Department, and the Postmaster General became a member of the Cabinet. Since that time the following Postmasters General have served as members of the Cabinet:

1829 (Mar. 9)–1833 (Apr. 30), William T. Barry.
1833 (May 1)–1840 (May 19), Amos Kendall (recommissioned, Mar. 15, 1836).
1840 (May 19)–1841 (Mar. 3), John M. Niles.
1841 (Mar. 4), Selah R. Hobbie (1st Asst. P. M. Gen.; *ad int.*).
1841 (Mar. 6)–1841 (Sept. 13), Francis Granger.
1841 (Sept. 14), Selah R. Hobbie (1st Asst. P. M. Gen.; *ad int.*).
1841 (Sept. 13)–1845 (Mar. 6), Chas. A. Wickliffe.
1845 (Mar. 6)–1849 (Mar. 5), Cave Johnson.
1849 (Mar. 6), Selah R. Hobbie (1st Asst. P. M. Gen.; *ad int.*).
1849 (Mar. 8)–1850 (July 22), Jacob Collamer.
1850 (July 23)–1852 (Aug. 31), Nathan K. Hall.
1852 (Aug. 31)–1853 (Mar. 7), Samuel D. Hubbard.
1853 (Mar. 7)–1857 (Mar. 6), James Campbell.
1857 (Mar. 6)–1859 (Mar. 8), Aaron V. Brown.
1859 (Mar. 9), Horatio King (1st Asst. P. M. Gen.; *ad int.*).
1859 (Mar. 14)–1860 (Dec. 31), Joseph Holt.
1861 (Jan. 1), Horatio King (1st Asst. P. M. Gen.; *ad int.*).
1861 (Feb. 12)–1861 (Mar. 5), Horatio King.
1861 (Mar. 5)–1864 (Sept. 23), Montgomery Blair.
1864 (Sept. 24)–1866 (July 16), William Dennison (recommissioned, Dec. 8, 1864).
1866 (July 17), Alexander W. Randall (1st Asst. P. M. Gen.; *ad int.*).
1866 (July 25)–1869 (Mar. 4), Alexander W. Randall.
1869 (Mar. 4), St. John B. L. Skinner (1st Asst. P. M. Gen.; *ad int.*).
1869 (Mar. 5)–1874 (July 3), John A. J. Cresswell (recommissioned Mar. 17, 1873).
1874 (July 3)–1874 (Aug. 24), James W. Marshall.
1874 (Aug. 24)–1876 (July 12), Marshall Jewell (recommissioned, Dec. 15, 1874).
1876 (July 12)–1877 (Mar. 12), James M. Tyner.
1877 (Mar. 12)–1880 (June 2), David M. Key.
1880 (June 2)–1881 (Mar. 5), Horace Maynard.
1881 (Mar. 5)–1881 (Dec. 20), Thomas L. James (recommissioned Oct. 27, 1881).
1881 (Dec. 20)–1883 (Mar. 25), Timothy O. Howe.
1883 (Mar. 26), Frank Hatton (1st Asst. P. M. Gen.; *ad int.*).
1883 (Apr. 3)–1884 (Sept. 24), Walter Q. Gresham (recommissioned, Dec. 11, 1883).
1884 (Sept. 25), Frank Hatton (1st Asst. P. M. Gen.; *ad int.*).
1884 (Oct. 14)–1885 (Mar. 6), Frank Hatton (recommissioned, Dec. 4, 1884).
1885 (Mar. 6)–1888 (Jan. 16), William F. Vilas.
1888 (Jan. 16)–1889 (Mar. 5), Don. M. Dickinson.
1889 (Mar. 5)–1893 (Mar. 6), John Wanamaker.
1893 (Mar. 6)–1895 (Mar. 1), Wilson S. Bissell.
1895 (Mar. 1)–1897 (Mar. 5), William L. Wilson.
1897 (Mar. 5)–1898 (Apr. 21), James A. Gary.
1898 (Apr. 21)–1902 (Jan. 9), Charles Emory Smith (recommissioned Mar. 5, 1901).
1902 (Jan. 9)–1904 (Oct. 10), Henry C. Payne.
1904 (Oct. 10)–1905 (Mar. 6), Robert J. Wynne.
1905 (Mar. 6)–1907 (Mar. 4), George B. Cortelyou.
1907 (Mar. 4)–1909 (Mar. 5), George von L. Meyer.
1909 (Mar. 5)–1913 (Mar 4), Frank H. Hitchcock.
1913 (Mar. 5) Albert S. Burleson. A. B. H.

POSTS, MILITARY. Reservations occupied by any detachment of the United States Army are called military posts. Those permanently garrisoned are designated as forts, whether fortified or not, and others are called camps while occupied by troops. As commandant of a post the senior officer on duty has special duties and prerogatives relating to its defense and administration, and a staff of six or more officers may be detailed as his assistants. Expenditures are limited to the appropriations made by Congress, except in case of emergency, when the commandant may spend $500 for the preservation of public property. No land can be purchased or buildings erected without express authority from Congress.

Posts were multiplied along the shifting frontiers of the West when troops were required to protect settlers from the Indians; and, though many of these have been abandoned as obsolete, others are maintained to satisfy local interests. The War Department in 1912 enumerated a number of posts which might be abandoned with advantage to the service, though some of them have been enlarged and improved at considerable expense in the previous ten years; as for example Fort D. A. Russell, Wyoming, cost $4,893,164 for construction work during the ten years ending June 30, 1911. The total for construction at nine posts was over $37,600,000, and during the same period eight new posts were constructed at an expense of $6,539,605.

In 1910, 100 posts, including six in Alaska and four in the Hawaiian Islands, cost $4,500,000 for improvements; and land was purchased for enlarging 12 of them at a cost of $313,525. Posts in the Philippines were allotted $2,000,000. Post exchanges to serve as centres of recreation cost $400,000 in 1910, the limit being $40,000 for the larger garrisons. These replace the post-traders' establishments once authorized and the "canteens" of later date. Since 1901 the sale of wine, beer, and other intoxicating liquors at military posts has been prohibited by law. Posts schools are maintained for enlisted men and children.

See COAST DEFENSE; EMINENT DOMAIN; JURISDICTION OVER FEDERAL SITES; MILITARY RESERVATIONS; NAVY YARDS.

References: U. S. War Department, *Military Laws* (1908), 622–626, 1181, 1247, 1294, *List of Military Posts* (1902); *Annual Reports, 1899-1903* (1904), 266–268; (1910), I, 56, 130, 152–154, 180, 254–256, 263–282; (1912), I, 156–176, 188; *House Exec. Doc.*, 62 Cong., 2 Sess., No. 490 (1912). C. G. CALKINS.

POVERTY AND POOR RELIEF

Definition of Poverty.—Poverty is defined by the Century Dictionary as "lack of means of support." Poverty is a relative term, which cannot be reduced to absolute terms or dollars or cents, or even to material supplies. That amount and kind of clothing, food or shelter which constitutes abundance, or even luxury in the tropics may represent starvation, cold and misery in a northern climate. An income which may be utterly insufficient for the ordinary needs of a family in the city of New York or San Francisco may enable a family to

live in comfort in a country village, where rent is nominal, and where a meagre income may be supplemented by a vegetable garden and a fishing rod.

If poverty means "lack of support," the definition raises the question of what constitutes adequate "support," and that leads directly to a study of standards of living. What is a fair support for a family of two, three or five persons in a given community? What are to be fixed as the minimum requirements for housing, food, clothing, recreation, etc.?

Standard of Living.—Efforts have been made to answer this question by systematic study of living conditions and family budgets in the city of New York. The income for a family of five persons should provide at least three rooms with windows opening to the outside air, decent beds and other necessary articles of furniture, running water and a separate water closet. It should provide also for sufficient fuel and light, sufficient plain wholesome food, including pure milk for children, comfortable clothing with proper underwear, and a small allowance for books, newspapers and recreation. The studies of experts in the city of New York have indicated that a minimum standard of living for a family of five, in that city is $700 to $900.

A very large proportion of the population of the United States falls below the standards of living here described, notwithstanding the fact that living conditions here are better than in most foreign countries. Dr. Devine says that, "Ten years ago Cuba and Porto Rico and the Philippines had more of poverty than all of the United States;" but that "Such poverty as that of Ireland, of Spain, of Italy and of agricultural Russia is not entirely unknown in America also. In New England, on the frontier, in southern mountains, in deserted mining regions, even in the backwood regions of our own Empire State, you find deep local traces of it. You find here and there, in every country, spots where food is scarce, where human wants are unsupplied for the reason that nature is niggardly and capital is scarce. Labor is of little value and wages are low for the reason that there is no profitable employment for labor. This is poverty. It is found ordinarily in primitive, agricultural communities rather than in industrial centers."

Pauperism.—This is defined as "dependence upon charity;" specifically, the condition of "a destitute person who receives or is entitled to receive aid under a pauper law." One who is cared for by relatives or personal friends is not to be regarded as a pauper; and it is generally agreed that relief extended by a fraternal organization or by any voluntary organization which assumes the attitude of neighborliness or friendliness does not carry with it the stigma of pauperism.

There is a common feeling that relief from public sources, either in the form of "out door relief" (*see*) or in the form of almshouse care involves a certain amount of odium. This feeling is less pronounced with reference to medical treatment and hospital care; though many self-respecting poor people strenuously object to the charity doctor and the charity hospital. A valid argument can be made in favor of the right of the industrious citizen who has faithfully met his obligations to society to enjoy without cost the provisions offered by the community at large, without loss of self-respect; but in practice this argument fails to carry weight with most of those to whom it is addressed.

Those who become familiar with the characteristics of the ordinary almshouse and the ordinary pauper cease to wonder that the industrious, well behaved citizen is unwilling to be classed with the dirty, ill behaved, ill spoken, complaining people who constitute the larger proportion of the pauper population; and those who are familiar with the careless, indifferent methods and the grudging and unsympathetic manner of the average public relief officer cannot but sympathize with the poor who dread to apply to them for needed help. It is not unreasonable that the well disposed poor should prefer to deal with private agencies and should seek the shelter of private individuals in preference to public ones.

Relief.—This is defined as, "charitable aid given, especially out of the poor rates." But in recent years there has been a steadily increasing disposition to use the word charity in its largest sense, namely benevolence, well wishing, love. The true philanthropist endeavors to carry this idea into every effort on behalf of his unfortunate neighbors.

Relief may first be considered as to source. It may be extended by individuals as an act of friendliness or neighborliness, inspired by personal knowledge of the need and personal good will toward the recipient. This is the ideal form of relief. It prevails extensively in rural districts and small villages and it is constantly illustrated in the generous ministry of the poor to their poor neighbors. The poor help each other more liberally, in proportion to their means, than the rich help the poor.

There is a field for the exercise of personal beneficence between individuals who are well to do and individuals who are poor; but in the complexity of modern society it is usually necessary to make use of the advice of those who have special opportunities to know the situation and the needs of the individual to be relieved. Even in moderate sized communities it is no longer possible for the rich and the poor to know each other.

Necessity of Organization.—Where personal philanthropy is impracticable, because of the great number of individuals to be considered or because of the unavoidable separation between the needy and those who seek to aid them, organization becomes necessary in the

church, the benevolent order, the relief society, or some other form of organized charity, public or private. The private voluntary organization is usually preferable to the public organization, because it can more nearly approximate the personal and friendly spirit of neighbors. The leaders of the modern movement of charity organization strive faithfully to inspire and foster the neighborly spirit in organized relief. But it must be acknowledged that the private agencies are inadequate and that it is unavoidable to employ public agents and to draw upon the public purse. Yet it is not impossible to inspire in public agents the same spirit of wisdom, patience and neighborly kindness which animates the best private agencies.

Distribution of Relief.—The relief of the poor is partially assumed in some states by the commonwealth, as in Massachusetts and New York, where the state assumes responsibility for the relief of poor persons who have not a legal "settlement" in some minor division of the state. This obligation is assumed by counties in many states, the administration being assigned to county commissioners, "directors of the poor," "overseers of the poor," etc. In many states this obligation is assumed by cities, villages or townships, the administration being assigned to "superintendents of the poor," "aldermen," "village trustees," "township overseers," etc. In some states the county system and the township system exist in different parts of the same commonwealth.

Outdoor Relief.—Public relief of the poor has usually been extended in the forms of: (1) medical attendance; (2) burials; (3) transportation; (4) "outdoor relief" (*see*), *i. e.*, cash, house rent, provisions, fuel, clothing, or other material relief, given to the individual in his own home.

The utility of outdoor relief has been questioned by many wise social students. It has often been administered by public officers without social training, or such practical wisdom as would enable them to use it with discrimination. In many communities it has been used shamelessly for the selfish ends of scheming politicians; while in other communities it has been used as a means of graft. As a result of criticisms, outdoor relief was abolished in the city of New York in 1875, in Brooklyn in 1878, in Philadelphia in 1879. It has never existed in Washington or Baltimore and it was maintained by those familiar with the facts that no serious hardship resulted. As a matter of fact public out-door relief is practically the only kind of relief in many parts of the country, especially in the rural districts. It is usually niggardly in amount and is disbursed with very little study of the real needs of the beneficiary or the probable effects of the dole.

With the rapid growth of child labor laws and compulsory education laws, cutting off the revenue of families from the labor of young children, a strong sentiment has grown up in favor of pensions for widows having young families to support. This is really a form of outdoor relief, and is opposed by some of those who have disapproved of such relief in the past; but it is warmly defended by others, who urge that the evils complained of can be prevented by efficient administration and that the evil of breaking up families, separating children from good mothers and subjecting them to the demoralization of institution life are greater than any necessary evils resulting from the plan of widows' pensions. The question is a difficult one, and can reach a satisfactory solution only by long continued study and experiment.

Temporary and Regular Relief.—Relief may be considered as to its duration. It may be temporary, as alms to a beggar, a night's lodging, or payment of railroad fare to the next station, or the furnishing of $5 worth of provisions. So, as a rule, relief that is purely temporary, is worse than useless, unless it is given in anticipation of careful inquiry and adequate provision for the need.

Relief may be regular, as a monthly pension, commitment to a poor house, or putting children into an orphan asylum for permanent care. Regular relief should be instituted only after the most careful consideration because it tends to produce a permanent condition of dependence.

Palliative, Remedial and Constructive Relief.—Relief may be considered as to its quality. It may be palliative, as putting oil of cloves into an aching tooth or sending a poor family a hundred miles to the home of relatives who are already on the verge of pauperism.

It may be remedial, for example, a course of hospital treatment which will restore the individual to health; the gift of a milch cow which may obviate the necessity for other material relief, or the reformation of a drunkard, which will restore him to the ranks of respectable citizenship and fit him to provide for the needs of his family.

Relief may be constructive, as, for example, bringing to bear upon a family such moral, religious and social influences as shall inspire ambition, hope, industry, and self-respect; or moving a family into a more favorable environment; or putting a man into a more remunerative situation better situated to his capabilities; or training a girl in domestic science or teaching a boy a good trade; or establishing a colony for the segregation of feeble-minded girls.

Principles of Relief.—Whether the duty of relief be undertaken by an individual, by the church, by a private society or by a public agency there are certain well established principles which should prevail. (1) There must be competent diagnosis. It is necessary to find out what is the matter. This involves a careful, sympathetic and intelligent inquiry into

the history of the family or individual, the causes of distress, the available resources of the family or their friends and such other information as will lead to an intelligent decision as to the remedy that is to be applied. There is a popular prejudice against "investigation" and "red tape." This prejudice can be largely removed by promptness in making the inquiry, by suitable temporary aid while it is pending, and by the personal touch of a wise agent, and by practical demonstration of efficient service.

(2) When the cause of the trouble has been discovered and the needed remedy has been determined the effort should be made to apply the remedy without fail, either directly or through the coöperation of others. This may involve simply advice and encouragement, finding of suitable employment, removal to a better environment; enlisting the coöperation of neighbors or the sympathy of a friendly visitor. It may involve increasing the resources of the family by donations of cash or material relief; sending some member of the family to a hospital, an old people's home, an alms house or some other institution. It may involve undertaking a systematic campaign for the renovation of the family, awakening new purposes, establishing new standards and stimulating new desires. It may mean dividing the family for a longer or shorter period, sending children to an institution or a family home. It may mean the intervention of the juvenile court or the domestic relations court or some other court to determine the status of the family and solve the problems involved.

Society is now willing to take a great deal more trouble and incur a great deal more expense, for the time being, than formerly, in behalf of needy families and individuals, recognizing that a large temporary outlay of money and effort may be much more economical than a protracted effort which does not remedy the situation.

The modern movement for the study of the causes of poverty and pauperism and for the development of preventive and constructive methods of dealing with the poor has been coincident with the development of the charity organization (*see*) movement in the United States. The development of the movement can be followed through the published volumes of the National Conference of Charities and Correction, by the creation of new committees dealing with these subjects, and by the gradual broadening scope of the discussions.

See Beggars; Charities; Children, Dependent, Public Care of; Municipal Lodging Houses; Old Age Pensions and Insurance; Outdoor Relief; Tenement House Regulation; Unemployment; Vagrancy.

References: C. R. Henderson, *Introduction to the Study of Dependent, Defective and Delinquent Classes* (1904); "Public Relief and Private Charity" in *Charities Review*, March, 1894, 226–35; *American Year Book, 1910*, and year by year; Amos G. Warner, *American Charities* (1908); State Conferences of Charities, *Proceedings* (obtainable from State Secretaries); National Conference of Charities and Corrections, *Proceedings* (1874 to date); O. F. Lewis, *Vagrancy in the United States* (1907); Alexander Johnson, *The Almshouse* (1911); Mary E. Richmond, *Good Neighbor in the Modern City* (1907); E. T. Devine, *Efficiency and Relief, Misery and its Causes* (1909), *Principles of Relief* (1910); Alice W. Solenberger, *One Thousand Homeless Men* (1911).

H. H. Hart.

POWER FOR INDUSTRIES.—There are no very complete statistics of the total quantity of power utilized in the United States. The Census report for 1910 on manufacturers gives a summary of the power employed for manufacturing, amounting to 18,680,776 horse-power. This is exclusive of other uses, such as transportation, water supply, electric lighting and miscellaneous purposes. The census report on Central Electric Light and Power Stations for 1907 gives the aggregate quantity of power employed in that service as 6,618,011 horse-power, but a part of this was rented to manufacturers, and is included in the 18,680,776 named above, of which it is stated that 1,872,670 horse-power is rented power. The total horse-power used for manufacturing was divided as follows: steam power, 14,202,137, or 76%; water power, 1,822,593 or 10%; gas power, 754,083, or 4%; electric power, 1,749,031 or 9%; other powers, 152,932 or less than one per cent.

These figures show the large extent to which steam is still relied upon for the production of power. Of other prime motors the water-wheel leads in importance, being credited with ten per cent of the whole, and, if the prime source of the electric power reported were known, it would doubtless materially increase this percentage.

Concentration.—Until quite recent years it was the practice to produce power in such separate, independent units as were required to supply the needs of a single establishment; and under these conditions the steam engine was unrivaled for convenience and economy, except in the isolated cases where water power was available and could be cheaply developed. The introduction and rapid development of the transmission of power by electricity over long distances, has made it possible to concentrate it in large quantities where a market exists for it, and to supply it therefrom to consumers of power in such quantities and at such distances as the demand calls for. This has greatly stimulated the development of power, both steam and water, in very large units with a corresponding economy and convenience.

Prime Movers.—While the reciprocating steam engine still retains the leading place

it has always held in the production of power, the increasing cost of fuel, and the fact that this form of engine has about reached its highest possible efficiency indicate that it may not long be able to hold its relative importance among prime motors. The development, rapid introduction and increasing efficiency of steam turbines, makes this new form of motor a formidable rival of the reciprocating engine; but the more recent developments indicate that it will be of the greatest utility as an adjunct of the reciprocating engine through the economical utilization of the exhaust steam from the latter, the combination of the two in this way attaining a degree of economy heretofore impossible where either is used separately. This combination seems to renew the possibilities of a continuance of the supremacy of steam in the production of power under many conditions which render its use attractive.

Transmission.—Until the introduction and rapid expansion of power transmission by electricity, water power was produced and utilized only in comparatively small projects sufficient for local needs. But the possibility of supplying power from one central point to consumers within a large area of territory, and the low cost at which water power can be produced in large quantities under favorable conditions, has called renewed attention to the water wheel as a prime motor, and the utilization of the great water power sites of the country is making very rapid progress. Since the chief element in the cost of producing water power is interest on the cost of development it is obvious that where a water power can be developed on a large scale at a low first unit cost, power can be produced very cheaply—so cheaply that other sources of power can not compete with it. But in fixing a price to the consumer the cost of transmission to him must be taken into consideration. This cost is determined not so much by the capital invested in the transmission line, as by the losses incident to transmission—that is, the losses in converting the power into electrical energy, transmitting this energy to a distant point and reconverting it into available power. Assuming that the power is delivered at a station 100 miles from the point of production it may be roughly estimated that for each one hundred horse-power produced only from 60 to 65 horse power can be made available to the consumer. This loss must be considered in fixing the price to the consumer, but even after this is done the resulting price may be lower than steam power could be produced on the spot.

Sources.—Of other sources of power the gas engine, operated by producer gas, is making an excellent record but has not yet come into large use, though under favorable conditions it is a formidable rival of steam. Wind power is utilized on a very small scale, but the uncertainties and inconstancies of the air currents make it unreliable. Many attempts have been made to utilize the force of ocean waves for the production of power, but none of them have been commercially successful.

Since heat is the ultimate source of all power, and since the sun transmits to the earth an almost unlimited quantity of heat, many attempts have been made to transform this heat into available power; and while no successful results have yet been achieved in this direction it seems not improbable that practical methods of utilizing this heat may in the future be discovered.

Only a small part of the total power produced and utilized is employed or controlled by governmental agencies. Municipalities that own and operate public utilities require large quantities of power and usually own the power-plants needed. The question whether, on the whole, the public ownership and operation of these utilities and of the power plants attached thereto, is advantageous or economical, has been widely discussed; but in only a few cases have the data supplied been sufficient to make fair comparisons. Either the experience has not extended over a period of sufficient time to yield average results, or the methods of accounting have been defective, or the data supplied have been incomplete. It may therefore still be regarded as an open question whether the public ownership of utilities and power plants is advantageous or not.

See CONSERVATION; WATER POWER, REGULATION OF; WATER SUPPLY.

References: C. E. Lucke, *Power* (1911); R. S. Ball, *Natural Sources of Power* (1908); C. D. Gray, "Investigation of Cost of Power" in *Journal of Franklin Institute*, Oct., 1911; S. F. Walker, *Steam Boilers, Engines and Turbines* (1908); F. R. Hutton, *The Gas Engine* (3d ed. rev., 1908); F. B. Crocker and M. Arendt, *Electric Motors, Their Action, Control and Application* (1910); D. W. Mead, *Water Power Engineering* (1908). S. WHINERY.

POWERS, CONCERT OF. See CONCERT OF POWERS.

POWERS, DISTRIBUTION OF. See DISTRIBUTION OF POWERS.

POWERS, DIVISION OF. See DIVISION OF POWERS.

PRACTICAL ARTS SCHOOLS. See SCHOOLS, PRACTICAL ARTS.

PREAMBLE TO THE CONSTITUTION. See CONSTITUTION OF THE UNITED STATES, PREAMBLE TO.

PRECEDENTS. See CASES, SIGNIFICANCE OF, IN CONSTITUTIONAL LAW; REPORTS OF JUDICIAL CASES.

PRECINCT, ELECTORAL. In some states the term precinct is equivalent to parish or township; generally it refers to the smallest political subdivision in either township, town or city, and is marked off for convenience in voting. The voters in a precinct cast their ballots at the polls provided for that precinct. City precincts are made to contain as nearly as possible an equal number of voters. Precincts must be entire wards or wholly within the one ward or town, *i. e.*, one precinct may not be made up of parts of adjacent wards or districts. Through official maps and lists of polling places displayed on registration days the voter may learn to which precinct he belongs. See ELECTION SYSTEM IN THE UNITED STATES. **Reference:** R. H. Fuller, *Government by the People* (1908), 24, 25. J. M.

PRECINCT, MUNICIPAL. The election precinct, sometimes called the election district, is a division of the ward, made for polling purposes. It is a small area, the voters of which use the same polling place. In addition to this the precinct is also used as a geographical unit in the compilation of the voters' list and, occasionally, in the making of the tax roll. It is not, however, used as a unit of representation in local government nor as an administrative division in carrying on the business of the municipality. The election precinct should be distinguished from the police precinct (*see* POLICE, STATION HOUSES).

See POLICE IN AMERICAN CITIES.

W. B. M.

PREEMPTION OF PUBLIC LANDS. See PUBLIC LANDS, PREËMPTION OF.

PREFECT IN FRANCE. The prefect is the chief administrative officer of the French *département*. France is divided into 86 departments (or 87 if Belfort be included) and each is under the administrative supervision of a prefect. The department of the Seine (which includes Paris) has two prefects, one called the prefect of the Seine; the other called the prefect of police. The prefects are appointed by the president of the republic on the advice of the minister of the interior; they hold office during the pleasure of the president; but in practice are given reasonable security of tenure. They are well paid and exercise important powers. The powers of the prefect are twofold: (1) those which he exercises as administrative head of the department; (2) those which he exercises as the local agent of the central government. In the former capacity he prepares the annual budget of the department and lays this before the general council, which is, as it were, the departmental legislature. He supervises the spending of local appropriations; represents the department in all legal matters; and has general charge of departmental property, roads, and other public works. As local agent of the central government, on the other hand, the prefect supervises the working of administration in the arrondissements (or counties) and in the communes (towns and villages). He has supervisory authority over local police affairs and is charged with the general maintenance of law and order within his department. In addition he has various duties connected with the preparation of the annual recruit list in connection with the system of compulsory military service; the compilation of returns and statistics; the management of jails, poorhouses and asylums; and the administration of the government monopolies. He is presiding officer of the council of the prefecture—an administrative court. The prefect is assisted by subordinates called subprefects, of whom there is one for each arrondissement. See LOCAL SELF-GOVERNMENT; MUNICIPAL GOVERNMENT IN CONTINENTAL EUROPE; POLICE IN EUROPEAN CITIES. **References:** F. J. Goodnow, *Comparative Administrative Law* (1903), I, 272–277; T. de Croissy, *Dictionnaire Municipal* (1903), article *Préfet;* G. La Breton, *Le pouvoir réglementaire des préfets* (1900).

W. B. M.

PREFERENTIAL TARIFF. See TARIFF, PREFERENTIAL.

PREFERENTIAL VOTING. See VOTING, PREFERENTIAL.

PRELIMINARY CANVASS. A preliminary canvass is often made before a presidential campaign to determine the advisability of entering the lists for a party nomination. Such a canvass is conducted secretly and quietly to test the strength of a candidate before public announcement is made. More formal and thorough canvasses are conducted during important election campaigns, with the object of enabling party leaders to forecast the result of the election. State committees under the general direction of the national committee often conduct three distinct canvasses during a presidential campaign. They send out poll books to local party workers in county, town or district, in which the supporters of the two parties in every voting precinct may be listed. The returns are sent to the state committee. The first canvass, made at the beginning of the campaign, gives the attitude of the voters before the special campaign debates. The second shows the trend of changes incident to the discussion. The final canvass is made at the end of the campaign when each voter has fully made up his mind. This last is conducted with great care by experts selected for the work from local party men distinguished for their ability and accuracy. By means of these preliminary canvasses the result of the election is often successfully predicted. During the campaign of 1896 the Republicans in some

states made five canvasses. Party workers were especially instructed to enroll every Republican who declared his intention to vote for the Democratic candidate; and measures were instituted to win back the recreant party members. Thus the canvasses not only assist in forecasting results but may be made an agency for keeping party members in line. See POLLS; VOTES, CANVASS OF. References: J. A. Woodburn, *Political Parties and Party Problems* (1909), 211; M. Ostrogorski, *Democracy and Party System* (1910), 179, 203, 204; J. Macy, *Party Organization and Machinery* (1912), 121. J. M.

PRELIMINARY ELECTIONS. A term used to denote elections held within the party, regulated by law, for the purpose of nominating candidates for office to be voted for at the regular election. It applies to nominations made by primary elections in contradistinction to those made in party conventions. See PRIMARY; PRIMARY, DIRECT. O. C. H.

PREMIER. See PRIME MINISTER.

PREROGATIVE. Mr. Dicey prefaces his examination of the prerogative with the statement that it is a term which has caused more perplexity to students than any other expression referring to the British constitution. Historically and as a matter of actual fact, he affirms that it is nothing else than the residue of discretionary or arbitrary authority which at any given time is legally left to the Crown, whether such power be in fact exercised by the king himself or by his Ministers. Every act which the executive government can lawfully do without the authority of Parliament is done in virtue of the prerogative. Thus no statute is required to make war or peace, to create peers, to dismiss a minister from office, or to appoint his successor. The doing of these things lies legally within the discretion of the Crown; it belongs to the discretionary authority of the government.

Anson, who accepts this definition of Dicey's of the prerogative, ascribes the rights and privileges which make up the prerogative to three sources: (1) the residue of the executive power of the king in the early stages of English history, when he led his people in war, administered their affairs in peace, was their judge in the last resort; this power reduced by statute and limited by conventional restriction, remains as the discretionary authority of the executive; (2) there are parts of the prerogative which are derived from the position of the king as the feudal chief, the ultimate land-owner, and the lord of every man; hence arise the right to escheats, to treasure trove, to the custody of idiots and lunatics; (3) there are attributes with which the Crown has been invested by legal theory. Such is the attribute of perpetuity, for which since the Revolution of 1688 provision has been made by statute for continuity in the administration of justice and the course of the executive government independently of the demise of the Crown. Such also is the attribute of perfection of judgment—that the king can do no wrong. Hence the king's ministers are held responsible for the acts of the king.

The development of the Cabinet since the reign of William III has greatly restricted the prerogative of the Crown. There are circumstances in which a prime minister can ask the dissolution of Parliament. The Crown cannot dismiss a member of the Cabinet who has the confidence of his colleagues, without bringing the administration to an end. War can be declared by the king only on the advice of the Cabinet. Peers are created on the advice of the Cabinet; and the result of changed conditions since the Cabinet reached its modern development is that there is but one act which is the personal act of the sovereign. A prime minister who is about to retire, offers the king no advice as to the choice of a successor. "That," wrote Peel in 1845, "is almost the only act which is the personal act of the sovereign." The king must be kept informed of the policies and measures of the Cabinet, and sufficiently early to admit of his counsel being offered and his objections considered.

See CABINET GOVERNMENT; CROWN; EXECUTIVE SYSTEM IN GREAT BRITAIN; PARLIAMENT.

References: A. V. Dicey, *Intro. to the Study of the Law of the Constitution* (1893), 352–353; W. R. Anson, *Law and Custom of the Constitution* (3d ed., 1907), II, Pt. I, 2–6 and index; A. L. Lowell, *The Government of England* (1908), I, 13, 18.

EDWARD PORRITT.

PRESENTMENT. The written notice which a grand jury takes of any offense, from their own knowledge, without an indictment or information put before them by the government. It indicates that there is reasonable ground for trying the person named for the offense charged. References: W. Blackstone, *Commentaries*, IV, 301; Mack *vs.* People, 82 *N. Y.* 237.

H. M. B.

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